OGC-94-52916
19 September 1994

MEMORANDUM FOR: David P. Holmes
Deputy General Counsel

FROM: Robert J. Eatinger. Jr.
Assistant General Counsel
Litigation Division, OGC

SUBJECT: DCI Sources and Methods Authority With Respect to JFK Assassination Records

1. Per your request, I have attached a copy of the President John F. Kennedy Assassination Records Collection Act of 1992 (ARCA), Pub. L. 102-526, 106 Stat. 3443-3458, reprinted at 44 U.S.C. § 2107 note. For your convenience, I have highlighted the pertinent provisions that will aid in responding to an inquiry regarding the statute's effect on the DCI's statutory authority to protect intelligence sources and methods.

2. The clear language and intent of the law is to supersede statutes that prohibit disclosure of information, except for some irrelevant subject areas, such as tax records. The statute provides that "it shall take precedence over any other law (except section 6103 of the Internal Revenue Code), judicial decision construing such law, or common law doctrine that would otherwise prohibit" the disclosure of information subject to the Act. ARCA § 11(a). This language, taken with the provisions discussed below which limit the intelligence sources and methods that may be protected and set a strict procedural scheme by which information is to be reviewed under the ARCA, effectively supersedes the DCI's National Security Act authority with respect to intelligence sources and methods information subject to the ARCA.

3. Section 6 of the ARCA provides the grounds for which the release of information may be "postponed." The statute contemplates that all information will eventually be released. Indeed, it specifies that all information will be made available to the public no later than 25 years after the passage of the ARCA (which occurred in October 1992) unless the president certifies that continued postponement is necessary. ARCA § 4(g)(2)(D). With respect to intelligence-related information, ARCA allows postponement if:

"(1) the threat to ... intelligence operations ... is of such gravity that it outweighs the public interest, and such public disclosure would reveal--

(A) an intelligence agent whose identity currently requires protection;

(B) an intelligence source or method which is currently utilized, or reasonably expected to be utilized, by the United States Government and which has not been officially disclosed, the disclosure of which would interfere with the conduct of intelligence activities; or

(C) any other matter currently relating to ... intelligence operations ... the disclosure of which would demonstrably impair the national security of the United States."

ARCA § 6(1) (Emphasis added.)

4. The originating agency is to make the first review to identify information that meets the standards for postponement. ARCA § 4(c)(2)(D)(i). For CIA, this effort is being undertaken by the Historical Review Group, in consultation with the Directorate of Operations and other appropriate Agency components. Information the originating agencies identify for postponement must be transmitted to the Review Board. ARCA § 4(c)(2)(E). The Review Board "shall consider and render decisions on a determination by a Government office to seek to postpone the disclosure of assassination records." ARCA § 7(i)(1). Specifically, the "Review Board shall consider and render decisions on ... whether an assassination record or particular information in a record qualifies for postponement of disclosure under the Act." ARCA § 7(i)(2)(B).

5. If the Review Board determines to order the disclosure of information that the originating agency felt met the criteria for postponement, it "shall notify the head of the originating body of its determination and publish a copy of the determination in the Federal Register within 14 days after the determination is made." ARCA § 9(c)(4)(A). If the information contained in an assassination record is "obtained or developed solely within the executive branch, the President shall have the sole and nondelegable authority to require the disclosure or postponement of ... the information under the standards set forth in Section 6." ARCA § 9(d)(1) (emphasis added). The President's decision must be certified to the Review Board within 30 days of the Review Boards determination. *Id.* Records postponed by the President must be re-reviewed every 5 years. ARCA § 9(d)(2).

SUBJECT: DCI Sources and Methods Authority With Respect to JFK Assassination Records

6. I would be happy to discuss this further if you so desire. You might also want to contact John Pereira (x30373) since he has met with some or all of the Review Board members.

Robert J. Eatinger, Jr.

Attachment

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SUBJECT: DCI Sources and Methods Authority w/Respect to JFK Assassination Records

OGC-94-52916

DCI/OGC/RJEatinger:76105 (19 Sept 94)

Original - Addressee (w/attach) (hand delivered)
1 - OGC Registry (~~w/attach~~)
1 - Lit File ________
1 - RBB (OGC/ILD)
1 - C/HRG (J.Pereira-404 Ames)
1 - RJE - Soft File (w/attach)
1 - RJE - Signer
1 - PDP
1 - KK -fyi
1 - PAS-fyi

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CHAPTER XIV -- ASSASSINATION RECORDS REVIEW BOARD

Part 1400 -- GUIDANCE FOR INTERPRETATION AND IMPLEMENTATION OF THE PRESIDENT JOHN F. KENNEDY ASSASSINATION RECORDS COLLECTION ACT OF 1992" (ARCA)

Sec.

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Authority: 44 U.S.C. 2107 note.

§ 1400.1 Scope of assassination record.

(a) An assassination record includes, but is not limited to, all records, public and private, regardless of how labeled or identified, that document, describe, report on, analyze, or interpret activities, persons, or events reasonably related to the assassination of President John F. Kennedy and investigations of or inquiries into the assassination.

(b) An assassination record further includes, without limitation:

(1) All records as defined in Sec. 3(2) of the ARCA;

(2) All records collected by or segregated by all federal, state, and local government agencies in conjunction with any investigation or analysis of or inquiry into the assassination of President Kennedy (for example, any intra-agency investigation or analysis of or inquiry into the assassination; any inter-agency communication regarding the assassination; any request by the House Select Committee on Assassinations to collect documents and other materials; or

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any inter- or intra-agency collection or segregation of documents and other materials);

(3) Other records or groups of records listed in the Notice of Assassination Record Designation, as described in §1400.8 of this chapter.

§1400.2 Scope of additional records and information.

The term additional records and information includes:

(a) All documents used by government offices and agencies during their declassification review of assassination records as well as all other documents, indices, and other material (including but not limited to those that disclose cryptonyms, code names, or other identifiers that appear in assassination records) that the Assassination Records Review Board has a reasonable basis to believe may constitute an assassination record or would assist in the identification, evaluation or interpretation of an assassination record. The Assassination Records Review Board will identify in writing those records and other materials it intends to seek under this section.

(b) All training manuals, instructional materials, and guidelines created or used by the agencies in furtherance of their review of assassination records.

(c) All records, lists, and documents describing the procedure by which the agencies identified or selected assassination records for review.

(d) Organizational charts of government agencies.

(e) Records necessary and sufficient to describe the agency's:

(1) Records policies and schedules;

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(2) Filing systems and organization;

(3) Storage facilities and locations;

(4) Indexing symbols, marks, codes, instructions, guidelines, methods and procedures;

(5) Search methods and procedures used in the performance of the agencies' duties under the ARCA; and

(6) Reclassification to a higher level, transfer, destruction, or other information (e.g., theft) regarding the status of assassination records.

(f) Any other record that does not fall within the scope of assassination record as described in §1400.1, but which has the potential to enhance, enrich, and broaden the historical record of the assassination.

§1400.3 <u>Sources of assassination records and additional records and information.</u>

Assassination records and additional records and information may be located at, or under the control of, without limitation:

(a) Agencies, offices, and entities of the executive, legislative, and judicial branches of the federal government;

(b) Agencies, offices, and entities of the executive, legislative, and judicial branches of state and local governments;

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(c) Record repositories and archives of federal, state, and local governments, including presidential libraries;

(d) Record repositories and archives of universities, libraries, historical societies, and other similar organizations;

(e) Individuals who possess such records by virtue of service with a government agency, office, or entity;

(f) Persons, including individuals and corporations, who have obtained such records from sources identified in subparagraphs (a) through (e) of this section;

(g) Persons, including individuals or corporations, who have themselves created or have obtained such records from sources other than those identified in subparagraphs (a) through (e) of this section;

(h) Federal, state, and local courts where such records are being held under seal; or

(i) Foreign governments.

§1400.4 Types of materials included in scope of assassination record and additional records and information.

The term record in assassination record and additional records and information includes, for purposes of interpreting and implementing the ARCA:

(a) papers, maps, and other documentary material;

(b) photographs;

(c) motion pictures;

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(d) sound and video recordings;

(e) machine readable information in any form; and

(f) artifacts.

§1400.5 Requirement that assassination records be released in their entirety.

An assassination record shall be disclosed in its entirety except for portions specifically postponed pursuant to the grounds for postponement of public disclosure of records established in Sec. 6 of the ARCA, and no portion of any assassination record shall be withheld from public disclosure solely on grounds of non-relevance unless, in the Assassination Records Review Board's sole discretion, release of part of a record is sufficient to comply with the intent and purposes of the ARCA.

§1400.6 Originals and copies.

(a) For purposes of determining whether originals or copies of assassination records will be made part of the President John F. Kennedy Assassination Records Collection (the JFK Assassination Records Collection) established under the ARCA, the following shall apply:

(1) In the case of papers, maps, and other documentary materials, the Assassination Records Review Board may determine that record copies of Government records, either the signed original, original production or a reproduction that has been treated as the official record maintained to chronicle

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government functions or activities, may be placed in the JFK Assassination Records Collection;

(2) In the case of other papers, maps, and other documentary material, the Assassination Records Review Board may determine that a true and accurate copy in lieu of the original may be placed in the JFK Assassination Records Collection;

(3) In the case of photographs, the original negative, whenever available (otherwise, the earliest generation print that is a true and accurate copy) may be placed in the JFK Assassination Records Collection;

(4) In the case of motion pictures, the camera original, whenever available (otherwise, the earliest generation print that is a true and accurate copy), may be placed in the JFK Assassination Records Collection;

(5) In the case of sound and video recordings, the original recording, whenever available (otherwise, the earliest generation copy that is a true and accurate copy), may be placed in the JFK Assassination Records Collection;

(6) In the case of machine-readable information, a true and accurate copy of the original (duplicating all information contained in the original and in a format that permits retrieval of the information) may be placed in the JFK Assassination Records Collection; and

(7) In the case of artifacts, the original objects themselves may be placed in the JFK Assassination Records Collection.

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(b) To the extent records from foreign governments are included in the JFK Assassination Records Collection, copies of the original records shall be sufficient for inclusion in the collection.

(c) In cases where a copy, as defined in paragraph (a) of this section above, is authorized by the Assassination Records Review Board to be included in the JFK Assassination Records Collection, the Assassination Records Review Board may, at its discretion if it determines it to be necessary to ensure the integrity of the JFK Assassination Records Collection, require a certified copy. In cases where an original, as defined in paragraph (a) of this section, is required for inclusion in the JFK Assassination Records Collection the Assassination Records Review Board may, at its discretion, accept the best available copy. In such cases that records included in the collection, whether originals or copies, contain illegible portions, such records shall have attached thereto a certified transcription of the illegible language to the extent practicable.

(d) For purposes of implementing the ARCA, the term <u>copy</u> means a true and accurate photocopy duplication by a means appropriate to the medium of the original record that preserves and displays the integrity of the record and the information contained in it.

(e) Nothing in this section shall be interpreted to suggest that additional copies of any assassination records contained in the JFK Assassination Records Collection are not also assassination records that, at the Assassination Records

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Review Board's discretion, may also be placed in the JFK Assassination Records Collection.

(f) Nothing in this section shall be interpreted to prevent or preclude copies of any assassination records, and particularly assassination records in audiovisual or machine readable formats, from being made from time to time in the professional judgment of and at the discretion of the National Archives and Records Administration for purposes of preservation or reformatting to conform to different hardware and/or software requirements.

§1400.7 Additional guidance.

(a) A government agency, office, or entity includes, for purposes of interpreting and implementing the ARCA, all current, past, and former departments, agencies, offices, divisions, foreign offices, bureaus, and deliberative bodies of any federal, state, or local government and includes all inter- or intra-agency working groups, committees, and meetings that possess or created records relating to the assassination of President John F. Kennedy.

(b) The inclusion of artifacts in the scope of the term assassination record is understood to apply solely for purposes of establishing the JFK Assassination Records Collection and for fully implementing the terms of the ARCA and has no direct or indirect bearing on the interpretation or implementation of any other statute or regulation.

© In the case of artifacts deemed to be assassination records and included in

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the JFK Assassination Records Collection, the provision to the public of photographs, drawings, or similar materials depicting the artifacts shall be sufficient to comply with the ARCA's requirement that copies of assassination records be provided to the public upon request. Additional display of or examination by the public of artifacts in the JFK Assassination Records Collection shall occur under the terms and conditions established by the National Archives and Records Administration to ensure their preservation and protection for posterity.

(d) The terms and, or, any, all, and the plural and singular forms of nouns shall be understood in their broadest and most inclusive sense and shall not be understood to be terms of limitation.

(e) Unless the Assassination Records Review Board in its sole discretion directs otherwise, records that are identified with respect to a particular person shall include all records relating to that person that use or reflect their true name or any other name, pseudonym, codeword, symbol, number, cryptonym or alias used to identify that person.

(f) Unless the Assassination Records Review Board in its sole discretion directs otherwise, records that are identified by the Assassination Records Review Board with respect to a particular operation or program shall include all records pertaining to that program by any other name, pseudonym, codeword, symbol, number or cryptonym.

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§1400.8 Implementing the ARCA -- Notice of Assassination Record Designation.

(a) A Notice of Assassination Record Designation shall be the mechanism for the Assassination Records Review Board to announce publicly its determination that a record or group of records meets the definition of assassination records.

(b) Notice of all designations will be published in the Federal Register within 30 days of the decision to designate such records as assassination records.

In determining that a record or group of records meets the definition of assassination records, the Assassination Records Review Board must determine that the record or group of records will more likely than not enhance, enrich, and broaden the historical record of the assassination.

Calendar No. 552

102D CONGRESS
2d Session

SENATE

REPORT
102-328

THE PRESIDENT JOHN F. KENNEDY ASSASSINATION RECORDS COLLECTION ACT OF 1992

R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 3006

TO PROVIDE FOR THE EXPEDITIOUS DISCLOSURE OF RECORDS RELEVANT TO THE ASSASSINATION OF PRESIDENT JOHN F. KENNEDY

JULY 22 (legislative day, JULY 20), 1992.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE
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tion, it is important to emphasize and clarify the legislative intent and importance of particular provisions of the Act.

Defining assassination records

"Assassination records" are defined in Section 3. The definition of "assassination records" is a threshold consideration for the successful implementation of the Act. Its scope will be the barometer of public confidence in the release of assassination records. While the records of past presidential commissions and congressional committees established to investigate the assassination of President Kennedy are included as assassination records under this Act, it is intended and emphasized that the search and disclosure of records under this Act must go beyond those records. While such records are valuable, they reflect the views, theories, political constraints, and prejudices of past inquiries. Proper implementation of this Act and providing the American public with the opportunity to judge the surrounding history of the assassination for themselves, requires including not only, but going beyond, the records of the Warren and Rockefeller Commissions, and the Church and House Select Assassination Committees.

The term "assassination record" was not more specifically defined by the Committee because to do so before more is known about the universe of records would have been premature, and would have further injected the government between the records and the American public. There is a sufficient volume of known assassination records to organize and review at the outset. However, it is intended that the Review Board issue guidance to assist in articulating the scope or universe of assassination records as government offices and the Review Board undertakes their responsibilities. Such guidance will be valuable notwithstanding the fact that government offices will begin to organize and review their records before the Review Board is established. Government offices are required to begin the review and disclosure of records upon enactment to expedite public access to the many records which do not require additional review or postponement. However, the ultimate work of the Review Board will involve not only the review of records recommended for postponement, but requiring government offices to provide additional information and records, where appropriate. Guidance, especially that developed in consultation with the public, scholars, and affected government offices, will prove valuable to ensure the fullest possible disclosure and create public confidence in a working definition that was developed in an independent and open manner.

Autopsy Records

The Act specifically excludes from the definition of "assassination records" the autopsy records and copies or reproductions made from such records donated by the Kennedy family pursuant to a deed of gift executed on October 29, 1966. These records include the autopsy photographs and X-rays of President Kennedy. The Committee believes that this exclusion is a sound policy. The Committee believes that there is a compelling justification for protecting the privacy of the Kennedy family from the unwarranted

the date of enactment unless, in the case of executive branch records, the President demonstrates that public disclosure will result in an identifiable harm to the national security, intelligence operations, or foreign relations of the United States.

The Assassination Records Review Board is an independent agency within the executive branch. The five-member Review Board will be appointed by the President with the advice and consent of the United States Senate. The confirmation hearings will be conducted by the Committee on Governmental Affairs. The Act requires that the Review Board include at least one historian and one attorney, and that each member is a national recognized professional in his or her field. The legislation requires that prior to making the appointments, the President is required to consider recommendations from the American Historical Association, the Organization of American Historians, the Society of American Archivists, and the American Bar Association.

To ensure a comprehensive search and disclosure of assassination records, particularly to enable the public to obtain information and records beyond the scope of previous official inquiries, the Review Board has the authority to direct any government office to produce additional information and records which it believes are related to the assassination. It has the authority to subpoena private persons and to enforce the subpoenas through the courts.

The Review Board is authorized for a two-year period and it may be extended by a majority vote of the Review Board for up to an additional year. The Review Board could decide to extend it existence to less than one year if that is the time determined as necessary to complete its work. Annual financial reports and other periodic reports are required to be provided to the Congress. The reports must include statements of progress, the level of cooperation of government offices and agencies, and the possible need for additional time or authority from Congress.

IV. BACKGROUND AND NEED FOR LEGISLATION

On November 22, 1963, President John F. Kennedy was assassinated. It was a tragic and defining moment in American history. The desire by the American public to understand who assassinated President Kennedy, and why, has resulted in several official investigations and a broad spectrum of private inquiries and scholarship. Unfortunately, in the eyes of the public, each investigation and inquiry served to raise additional questions, and did so while increasing the volume of secret government records about the assassination. In 1992, the public demand, fostered by increased media attention, the opening of secret files by changing governments around the world, and other factors, culminated in the recognition by the Congress and the Executive Branch that the records related to the assassination of President Kennedy should be fully disclosed.

In addition to the legislation considered by the Committee, and its counterpart considered by the House Committee on Government Operations, four other related, though more limited, measures were introduced in the House of Representatives in 1992. Two bills mandating the release of all Kennedy assassination investigation

(B) For dependents of active duty members in pay grades of E–5 and above, $25; and,

(C) For retirees and their dependents, $25.

(vi) The copayment for prescription drugs per prescription, for a maximum 30-day supply, is as follows:

(A) For dependents of active duty members in pay grades E–1 through E–4, $5;

(B) For dependents of active duty members in pay grades of E–5 and above, $5; and,

(C) For retirees and their dependents, $9.

(vii) The copayment for ambulance services is as follows:

(A) For dependents of active duty members in pay grades of E–1 through E–4, $10;

(B) For dependents of active duty members in pay grades of E–5 and above, $15; and,

(C) For retirees and their dependents, $20.

(e) *Inpatient cost sharing requirements under the Uniform HMO Benefit.*—(1) *In general.* In lieu of usual CHAMPUS cost sharing requirements (see § 199.4(f)), special cost sharing amounts are required. The specific requirements shall be uniform and shall be published as a notice annually by the Assistant Secretary of Defense (Health Affairs).

(2) *Structure of cost sharing.* For services other than mental illness or substance use treatment, there is a nominal copayment for active duty dependents and for retired members, dependents of retired members, and survivors. For inpatient mental health and substance use treatment, a separate per day charge is established.

(3) *Amount of inpatient cost sharing requirements.* Beginning in fiscal year 1995, the inpatient cost sharing requirements are as follows:

(i) For acute care admissions and other non-mental health/substance use treatment admissions, the per diem charge is as follows, with a minimum charge of $25 per admission:

(A) For dependents of active duty members in pay grades E–1 through E–4, $11;

(B) For dependents of active duty members in pay grades of E–5 and above, $11; and,

(C) For retirees and their dependents, $11.

(ii) For mental health/substance use treatment admissions, and for partial hospitalization services, the per diem charge is as follows, with a minimum charge of $25 per admission:

(A) For dependents of active duty members in pay grades E–1 through E–4, $20;

(B) For dependents of active duty members in pay grades of E–5 and above, $20; and,

(C) For retirees and their dependents, $40.

(f) *Updates.* The enrollment fees for fiscal year 1995 set under paragraph (c) of this section and the per services specific dollar amounts for fiscal year 1995 set under paragraphs (d) and (e) of this section may be updated for subsequent years to the extent necessary to maintain compliance with statutory requirements pertaining to government costs. This updating does not apply to cost sharing that is expressed as a percentage of allowable charges; these percentages will remain unchanged.

(g) *Applicability of the Uniform HMO Benefit to Uniformed Services Treatment Facilities Managed Care Program.* The provisions of this section concerning the Uniform HMO Benefit shall apply to the Uniformed Services Treatment Facilities Managed Care Program, effective October 1, 1995. Under that program, non-CHAMPUS eligible beneficiaries have the same payment responsibilities as CHAMPUS-eligible beneficiaries.

Dated: February 2, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–3028 Filed 2-7-95; 8:45 am]

BILLING CODE 5000-04-M

ASSASSINATION RECORDS REVIEW BOARD

36 CFR Part 1400

Guidance on Interpreting and Implementing the President John F. Kennedy Assassination Records Collection Act of 1992

AGENCY: Assassination Records Review Board (ARRB).

ACTION: Proposed interpretive regulation.

SUMMARY: The ARRB proposes to issue regulations providing guidance on the interpretation of certain terms defined in and the implementation of the President John F. Kennedy Assassination Records Collection Act of 1992.

DATES: To be considered, comments must be received on or before March 10, 1995.

ADDRESSES: Comments should be mailed to the Assassination Records Review Board at 600 E Street, NW, Second floor, Washington, D.C. 20530 or delivered in person to that address between the hours of 9:30 a.m. and 4:30 p.m., Monday through Friday (except legal holidays). Comments may also be faxed to the Board at (202) 724–0457. Comments received may be inspected in the Board's public reading room, located at the address shown above, between 10 a.m. and 3 p.m. Monday through Friday (except legal holidays). Persons wishing to inspect comments in the Board's public reading room should call the Board's office beforehand at (202) 724–0088 for further information.

FOR FURTHER INFORMATION CONTACT: Sheryl L. Walter (General Counsel), (202) 724–0088.

SUPPLEMENTARY INFORMATION:

Background

The President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107 note (as amended) (ARCA), established the President John F. Kennedy Assassination Records Collection (the JFK Collection) at the National Archives and Records Administration (NARA). In establishing the process for public disclosure of all records relating to the assassination, Congress created an independent agency within the executive branch, the Assassination Records Review Board (the Board), which consists of five citizens appointed by the President. Under the statute, the Board is empowered to decide "whether a record constitutes an assassination record." 44 U.S.C. 2107 note, Sec. 7(i)(2)(A). Congress further made clear its intent that the Board "issue guidance to assist in articulating the scope or universe of assassination records." President John F. Kennedy Assassination Records Collection Act of 1992, S.Rep. 102–328, 102d Cong., 2d Sess. (1992) at 21.

In constructing the proposed guidance set out here, the Board seeks to implement congressional intent that the JFK Collection contain "the most comprehensive disclosure of records related to the assassination of President Kennedy." *Id.* at 18. The Board is also mindful of Congress's instruction that the Board apply a "broad and encompassing" working definition of "assassination record" in order to achieve the goal of assembling the fullest historical record on this tragic event in American history and on the investigations that were undertaken in the assassination's aftermath. The Board recognizes that many agencies have already begun to organize and review records responsive to the ARCA even before the Board was appointed and began its work. Nevertheless, the Board's aim is that this guidance will aid in the ultimate assembly and public

disclosure of the fullest possible historical record on this tragedy and on subsequent investigations and inquires into it.

The Board's proposed guidance is designed to help government agencies and the Board identify and make available to the public all documents that will enhance, enrich, and broaden the historical record of the assassination of President John F. Kennedy. The Board seeks through this guidance to fulfill Congress's "inten[t] and emphasis that the search and disclosure of records under this Act must go beyond" the records of previous commissions and committees established to investigate President Kennedy's assassination. *Id.* at 21. The Board also seeks to provide notice of the scope of its intended exercise of authority to seek additional information or records in order to fulfill its functions and responsibilities under the ARCA.

In addition, the Board proposes to create a mechanism to facilitate the Board's ongoing work and to further ensure future public access to the broadest possible historical record. This mechanism will be known as the "Catalog of Assassination Records" (COAR). The COAR is intended to be an official listing of all records determined by the Board to meet the definition of "assassination record" and included in the JFK Collection.

Request for Comments

The Board seeks public comment on its proposed interpretive regulations intended to provide guidance on the interpretation of the term assassination record, the intended scope of its exercise of authority to seek additional information or records, and its additional proposals for implementation of the ARCA.

List of Subjects in 36 CFR Part 1400

Administrative practice and procedure, Archives and records.

Accordingly, the Assassination Records Review Board hereby proposes to establish a new chapter XIV in title 36 of the Code of Federal Regulations to read as follows:

CHAPTER XIV—ASSASSINATION RECORDS REVIEW BOARD

PART 1400—GUIDANCE FOR INTERPRETATION AND IMPLEMENTATION OF THE PRESIDENT JOHN F. KENNEDY ASSASSINATION RECORDS COLLECTION ACT OF 1992 (ARCA)

Sec.

Authority: 44 U.S.C. 2107 note.

§ 1400.1 Interpretation of assassination record.

(a) An *assassination record* includes, but is not limited to, all records, public and private, regardless of how labeled or identified, that document, describe, report, analyze, or interpret activities and events that may have led to the assassination of President John F. Kennedy; the assassination itself; and investigations of or inquiries into the assassination.

(b) An *assassination record* further includes, without limitation:

(1) All records as defined in Sec. 3(2) of the ARCA;

(2) All records called by or segregated by all federal, state, and local government agencies in conjunction with any investigation or analysis of or inquiry into the assassination of President Kennedy (for example, any intra-agency investigation or analysis of or inquiry into the assassination; any inter-agency communication regarding the assassination; any request by the House Select Committee on Assassinations to collect documents and other materials; or any inter- or intra-agency collection or segregation of documents and other materials);

(3) Other records or groups of records listed in the Catalog of Assassination Records, as described in § 1400.8 of this chapter.

§ 1400.2 Interpretation of additional records and information.

The term *additional information and records* includes:

(a) All documents used by government offices and agencies during their declassification review of assassination records as well as all other documents, indices, records, and other material that disclose cryptonyms, code names, or other identification material in assassination records.

(b) All training manuals, instructional materials, and guidelines created or used by the agencies in furtherance of their review of assassination records.

(c) All records, lists, and documents describing the procedure by which the agencies identified or selected assassination records for review.

(d) Organizational charts of government agencies.

(e) Records necessary and sufficient to describe the agency's:

(1) Records policies and schedules;

(2) Filing systems and organization; and

(3) Storage facilities and locations.

§ 1400.3 Sources of assassination records and additional records and information.

Assassination records and additional records and information may be located at, or under the control of, without limitation:

(a) Agencies, offices, and entities of the executive, legislative, and judicial branches of the federal government;

(b) Agencies, offices, and entities of the executive, legislative, and judicial branches of state and local governments;

(c) Record repositories and archives of federal, state, and local governments, including presidential libraries;

(d) Record repositories and archives of universities, libraries, historical societies, and other similar organizations;

(e) Individuals who possess such records by virtue of service with a government agency, office, or entity;

(f) Persons, including individuals and corporations, who have obtained such records from sources identified in paragraphs (a) through (e) of this section;

(g) Federal, state, and local courts where such records are being held under seal; or

(h) Foreign governments.

§ 1400.4 Types of materials included in scope of assassination record and additional records and information.

The term *record* in assassination record and additional records and information includes, for purposes of interpreting and implementing the ARCA:

(a) Papers, maps, and other documentary material;

(b) Photographs;

(c) Motion pictures;

(d) Sound and video recordings;

(e) Machine readable information in any form; and

(f) Artifacts.

§ 1400.5 Requirement that assassination records be released in their entirety.

An assassination record shall be disclosed in its entirety except for portions specifically postponed pursuant to the grounds for postponement of public disclosure of records established in section 6 of the ARCA, and no portions of any assassination records shall be withheld from public disclosure solely on grounds of non-relevance.

§ 1400.6 Originals and copies.

(a) For purposes of determining whether originals or copies of assassination records may be made part of the President John F. Kennedy Assassination Records Collection (the JFK Records Collection) to be established under the ARCA:

(1) In the case of papers, maps, and other documentary material, the Assassination Records Review Board (the Board) may determine that a true and accurate copy of the original is sufficient;

(2) In the case of photographs, the term record means the original negative if available, otherwise, the earliest generation print;

(3) In the case of motion pictures, the term record means the camera original if available, otherwise, the earliest generation print,

(4) In the case of sound and video recordings, the term record means the original recording, if available, otherwise, the earliest generation copy;

(5) In the case of machine-readable information, the Board may determine that a true and accurate copy of the original is sufficient; and

(6) Artifacts means the original object itself.

(b) In cases where a copy, as defined in paragraph (a) of this section is authorized by the Board to be included in the JFK Records Collection the Board may, at its discretion, require a certified copy. In cases where an original, as defined in paragraph (a) of this section, is required for inclusion in the JFK Records Collection the Board may, at its discretion, accept the best available copy.

§ 1400.7 Additional guidance.

(a) A government *agency, office*, or *entity* includes, for purposes of interpreting and implementing the ARCA, all departments, agencies, offices, divisions, foreign offices, bureaus, and deliberative bodies of any federal, state, or local government and includes all inter- or intra-agency working groups, committees, and meetings that possess or created records relating to the assassination of President John F. Kennedy.

(b) The inclusion of artifacts in the scope of the term assassination record is understood to apply solely for purposes of establishing the President John F. Kennedy Assassination Records Collection and for fully implementing the terms of the ARCA and has no direct or indirect bearing on the interpretation or implementation of any other statute or regulation.

(c) In the case of artifacts deemed to be assassination records and included in the John F. Kennedy Assassination Records Collection, provision to the public of photographs, drawings, or similar materials depicting the artifacts shall be sufficient to comply with the ARCA's requirement that copies of assassination records be provided to the public upon request. Other display to or examination by the public of artifacts in the John F. Kennedy Assassination Records Collection shall occur under terms and conditions established by the National Archives and Records Administration that are adequate to preserve and protect the artifacts for posterity.

(d) The terms *and, or, any, all*, and the plural and singular forms of nouns shall be understood in their broadcast and most inclusive sense and shall not be understood to be terms of limitation. Any records identified with respect to a particular person also includes any records for that person by any other name, pseudonym, codeword, symbol, number, cryptonym or alias. Any record described with respect to an operation or program includes any record pertaining to that program by any other name, pseudonym, codeword, symbol, number or cryptonym.

§ 1400.8 Implementing the ARCA—Catalog of Assassination Records.

(a) A Catalog of Assassination Records (COAR) shall be created as the official listing of all records determined by the Board to meet the definition of assassination record.

(b) Notice of all decisions to include records in the COAR will be published in the Federal Register within 30 days of the decision.

(c) In listing records or groups of records in the COAR, the Board must determine that the record or group of records will more likely than not enhance, enrich, and broaden the historical record of the assassination.

Dated: February 3, 1995.

David G. Marwell,

Executive Director, Assassination Records Review Board.

[FR Doc. 95-3112 Filed 2-7-95; 8:45 am]

BILLING CODE 6820-TD-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 93

[FRL-5149-9]

Transportation Conformity Rule Amendments: Transition to the Control Strategy Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to permanently align the timing of certain transportation conformity consequences with the imposition of Clean Air Act highway sanctions. For ozone nonattainment areas with an incomplete 15% emissions-reduction state implementation plan with a protective finding; incomplete ozone attainment/3% rate-of-progress plan; or finding of failure to submit an ozone attainment/3% rate-of-progress plan, and areas whose control strategy implementation plan for ozone, carbon monoxide, particulate matter, or nitrogen dioxide is disapproved with a protective finding, the conformity status of the transportation plan and program would not lapse as a result of such failure until highway sanctions for such failure are effective under other Clean Air Act sections.

This action would delay the lapse in conformity status, which would otherwise prevent approval of new highway and transit projects, and allow States more time to prevent the lapse by submitting complete ozone implementation plans.

EPA has published in the final rule section of this Federal Register a similar interim final rule which takes effect immediately and applies for six months. This proposal would apply the provisions of the interim final rule permanently.

DATES: Comments on this action must be received by March 10, 1995. A public hearing will be held at 10:30 a.m. on February 22, 1995 in Washington, DC.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Attention: Docket No. A-95-02, 401 M Street, SW., Washington, DC 20460.

CSI-0316/95
16 February 1995

NOTE FOR: D/IM/ADDA/IS
DCI/IRO
DA/IRO
DI/IRO
DO/IRO
DS&T/IRO
OGC (Bob Eatinger)
DD/OCA
C/IP&CRD
C/RDP/MSG/OIT

FROM: John Pereira
Historical Review Group

SUBJECT: JFK Assassination Records
Proposed Regulations

1. Attached for your review and comment is a copy of proposed regulations prepared by the JFK Assassination Records Review Board. The regulations focus on the definition of "assassination record", which is very broad. The possibility of requiring additional records searches is raised.

2. The Board plans to discuss the regulations at its next meeting on 6-7 March, so it would be helpful to give the Board our input in advance of that meeting. Please provide Barry Harrelson (x30292) or me (x30373) with your comments by 1 March.

John Pereira

John F. Pereira

Attachment

facsimile
TRANSMITTAL

to: John Pereira, CIA Historical Review Program
fax #: (703) 243-8343
re: ARRB proposed interpretive regulations
date: February 9, 1995
pages: 4, including cover sheet.

Dear John:

Following this cover sheet is a courtesy copy of the Assassination Records Review Board's proposed interpretive regulations, published yesterday in the Federal Register. The proposed regulations include guidance on interpretation of the scope of certain provisions of the Assassination Records Collection Act, including the terms "assassination record" and "additional records and information." The Board is soliciting comment from all interested parties and would welcome any comments that the CIA may have. (The comment period is 30 days; the deadline is March 10.)

If you have any questions or need any additional information, please don't hesitate to give me a call on my direct line or at our main number, 724-0088.

Sincerely,

Sheryl L. Walter
General Counsel

From the desk of

Sheryl L. Walter
General Counsel
Assassination Records Review Board
600 E Street, NW, Second Floor
Washington, D.C. 20530

(202) 724-0815
Fax (202) 724-0457

27 February 1995

To: C/HRG

Subj: Review Board's Proposed Regulations

1400.2(e)(3), Storage facilities and locations, presents a possible conflict with our continuing protection of WTC.

1400.5, Requirement that assassination records be released in their entirety...and no portion withheld solely on grounds of non-relevance. For that portion of the documents we have declared non-relevant that is operational and is clearly non-relevant we should argue strongly with the Board. The Director's statutory responsibility for the protection of sources and methods must be defended; and we can be sure that it was not anticipated that a KGB officer in Mexico City would be transferred to another country and go on generating much operational information. Furthermore, we saw it as the Board's responsibility to review the records we identified as non-relevant and to support publicly those of our decisions that they felt were justified!

1400.6, Originals and copies, could cause problems if the Board gets fussy about it. Originals of memos sent outside the agency would be gone(to the addressee). Originals of cables and despatches are virtually non-existant.

1400.8(c),"...the Board must determine that the record or group of records will more likely than not enhance, enrich, and broaden the historical record.." Like some of this stuff might be non-relevant?

Frank

14-00000

New Note

NOTE FOR: Edward P. Maffeo @ DCI
FROM: John N. Greer
DATE: 02/27/95 06:02:46 PM
SUBJECT: JFK Records

This is in response to your request that I review ASAP the proposed regulations by the JFK Assassination Records Review Board.

I see Sheryl Walters hand very much in evidence here. I see from the attachment that she is the Board's GC.

Like you, I am very concerned about the breadth of the reg's definitions. The key to keep in mind is the statutory authority for the Board. I would argue that the definition of "assassination record" in the statute (44 U.S.C. section 2107 note, section 3(2) of the Act) is more limited than the reg. The statute defines an assassination record as one "related" to the assassination of JFK. Thus, when section 1400.2 (d) and (e) of the reg authorize Board access to organizational charts of governmental agencies and records necessary and sufficient to describe the agency's records policies and schedules, filing systems and organization, and storage facilities and locations, I would argue that such information is way too far afield. There is no way we can allow the Board to have access to this information, which in any event is prohibited by section 403g from disclosure notwithstanding any other law.

The same issue arises with respect to section 1400.7(d) of the reg that proposes to include in the definition of record any records for a person by another name or personal identifier. This would appear to authorize Board access to all information about an agent who may have only been tangentially involved in the assassination but whose crypt is given in many other unrelated documents about unrelated operations. Talk about your camel's nose under the tent!

Finally, section 1400.5 of the reg raises an old dog of an issue. The National Security Archive (Sheryl's old employer) has been fighting for a long time in FOIA litigation that the FOIA refers to records and that therefore all information in a responsive record must be released unless otherwise exempt. There is no FOIA exemption, they argue, for non-responsive material in a record. This is a big problem for multi-topic documents, such as the NID. We, of course, argue that agencies are only required to process that which is asked for and delete non-responsive material as unrequested. The proposed reg would mean that the Board would have access to all information in a document about several unrelated operations or events if that document even mentioned the assassination or anything related to it. Again, the camel's nose.

CC: Thomas J. Benjamin @ DCI

From the Desk of Robert J. Eatinger

NOTE FOR: J. Barry Harrelson @ DA
FROM: Robert J. Eatinger
DATE: 03/01/95 01:46:44 PM
SUBJECT: Comments on proposed JFK reg

Here is advance copy:

OGC-95-50522
1 March 1995

MEMORANDUM FOR: Chief, Historical Review Group

FROM: Robert J. Eatinger, Jr.
Assistant General Counsel
Litigation Division, OGC

SUBJECT: Comments on JFK Assassination Records Proposed Regulation

1. The following are my comments on the Assassination Records Review Boards proposed interpretive regulations published in the Federal Register on 8 February 1995.

2. The term assassination record is defined in the President John F. Kennedy Assassination Records Collection Act of 1992, Pub.L. 102-525, 106 Stat. 3443, Oct. 26, 1992, reprinted at 44 U.S.C. § 2107 note (the Act). Any interpretive definition by the Board cannot exceed that in the Act. The Acts definition is found in Section 3(2) and provides:

> (a) Assassination record means a record that is related to the assassination of President John F. Kennedy, that was created or made available for use by, obtained by, or otherwise came into possession of

various Federal, State, or local government bodies.

3. The proposed regulation is broader than that in the Act. The proposed regulation includes as assassination records:

> records, public and private, regardless of how labeled or identified, that document, describe, report, analyze, or interpret activities and events that may have led to the

assassination of President John F. Kennedy; the assassination itself; and investigations of or inquiries into the assassination.

§ 1400.1(a). This language in overbroad in two respects. First, the phrase events that may have led to is both broader than relates to as in the Act and provides no articulable standard. For instance, the theme in the Oliver Stone movie JFK appears to be that President Kennedy was assassinated as a result of a conspiracy to keep the war in Vietnam from winding down. Under the proposed regulation, the Board might consider all records concerning the war in Vietnam during the Kennedy Administration as being assassination records. Without a standard, the phrase is permits arbitrary and inconsistent application. Third, it includes information about investigations and inquiries other than those conducted by those entities identified in the Act. Although the Board states that it is following the intent of Congress in seeking the most comprehensive disclosure of records related to the assassination, it appears the Board may be exceeding its authority.

4. The definition further states that assassination record includes, without limitation ... all records as defined in Sec. 3(2) of the ARCA. <u>See</u> § 1400.1(b)(1). Thus, by its terms it exceeds the statutory definition. Further, it is unhelpful because by refusing to limit itself to any articulable class of records it remains unlimited and subject to constant re-interpretation by the Board.

5. The proposed definition of additional information and records under proposed § 1400.2 is objectionable because the regulation does not provide the intended use of the definition. The Board may be attempting to provide a definition useful in interpreting the Boards authority under §7(j)(1)(C)(ii) of the Act:

> The Review Board shall have the authority to act in a manner prescribed under this Act including authority to ... direct a Government office to make available to the Review Board, and if necessary investigate the facts surrounding, <u>additional information, records</u>, or testimony from individuals, which the Review Board has reason to believe is required to fulfill its functions and responsibilities under this Act....

(Emphasis added.) If this is the case, the Board should expressly so state and provide opportunity for informed comment on that application. For instance, proposed § 1400.2(a) includes all documents used by the agency during its declassification review. This definition could include requests for legal advice on particular matters. Such advice would be protected within the particular agency by attorney-client privilege and should not be provided to an extra-agency body.

6. Please call me with any questions or suggestions.

Robert J. Eatinger, Jr.

CC:

TO: John N. Greer @ DCI
FROM: John F. Pereira
DATE: 03/02/95 05:07:45 PM
SUBJECT: Re: Proposed Regs by JFK Assassination Records Review Board

A number of us have concerns about the broad approach in the proposed regs. Among others, Bob Eatinger has written a memo on the subject. We are preparing a formal response for the Board, which will be sent around for comment

In the meantime, I have had an informal discussion with the Board's Executive Director, David Marwell, advising him of our concerns. He has invited us to propose specific textual changes.
The Board's deadline is 10 March.

Any additional thoughts would be welcome

CC: Edmund Cohen @ DA @ DCI, J. Edwin Dietel @ DA @ DCI, Edward P. Moffett @ DCI, Thomas J. Benjamin @ DCI

From the Desk of John N. Greer
OCA

NOTE FOR: Edmund Cohen @ DA
J. Edwin Dietel @ DA
John F. Pereira @ DA
FROM: John N. Greer
DATE: 03/02/95 04:22:48 PM
SUBJECT: Proposed Regs by JFK Assassination Records Review Board

Page and I are very concerned about the overly broad reach of the proposed regulations of the JFK Board. I have prepared specific comments that I will send by separate cover. In essence, we are concerned that the regs reach too far into Agency records and stray too far from the definition of an "assassination record" in the law. What input does CIA have into this process and what are the time constraints? It looks like a power grab. It seems to us that Cohen should engage immediately in his role as Chair of the Agency Release Panel. The full ARP might wish to address these issues at it 9 March meeting. Please advise.

CC: Edward P. Moffett @ DCI
Thomas J. Benjamin @ DCI

CONFIDENTIAL

NOTE FOR: J. Barry Harrelson @ DA
FROM: Gloria M. Boyd
DATE: 03/02/95 09:25:33 AM
SUBJECT: Response to the JFK Proposed Regulation

This vehicle seemed to be the best one available to pass my "bullets" to you. Perhaps you can dump them in a Word file and ammend them with your thoughts.

1400.1 Interpretation of Assassination Record

a.) non-limiting descriptor "may have led to the assassination" makes us vulnerable for capricious search demands

FYI ← p 31 of report says R.B should act on a "reasonable basis" in requesting additional info/record.

1400.2 Interpretation of Additional Records

a.) and b.) This relates to Agency classified resources that refer to the total Agency mission. - well beyond the "assassination" subject.

Identification of all such resources will require a separate effort requiring substantial resources. In addition it may be impossible to identify all such specific resources as the review effort involved many people having experience throughout the Agency.

These resources are classified and most probably would be recommended for "indefinite" postponement.

d.) and e.) Information described in these sections has been and is protected by the National Security Act

As a time period for this information is not stated it is thus implied to be open ended and that all such information would be made available.

1400.5 Requirement That Assassintion Records Be Released In Their Entirety

- Nonrelevance issue will most likely result in marked increase in postponed records.

Major Concern 201 & OP files If an individual's minor involvement in the JFK story or in anti Cuban activities make his complete file (or all files on the individual) we will have a major source protection & privacy problem

1400.6 Originals and Copies

a.) Large portion of CIA's JFK collection is comprised of copies. A search for originals will require a massive resource commitment. There are additionally a substantial number of previously sanitized documents in the collections.

1400.7 Additional Guidance

d.) Application of this requirement may well jeopardize current postponements aimed at protecting Agency personnel and sources

This requirement also implies a new generation of searches to "round-out" or to verify previous searches and retrieved material..

CC:

7 March 1995

NOTE FOR: Bob Eatinger, OGC

SUBJECT: JFK Proposed Regulations

As we discussed, I would appreciate your view as to whether OGC should send a separate paper to the JFK Board on the proposed regulations.

The attached is what we in HRG propose to coordinate in the Agency today, 7 March, depending on your view. I'll hold off circulating the attached draft for comment until I've heard from you.

(The Board asks for comments by 10 March.)

John P.

John Pereira

9 March 1995

MEMORANDUM FOR: J. Barry Harrelson @ DA

FROM: Jane C. Heishman

SUBJECT: JFK Assassination Records Proposed Regulations

REFERENCE:

Per your request, Anthony Frasketi concurs with the proposed regulation.

CC: James J. Boney @ DST
Anthony R. Frasketi @ DST

CSI-0319/95
8 March 1995

NOTE FOR: D/IM/ADDA/IS
DCI/IRO
DA/IRO
DI/IRO
DO/IRO
DS&T/IRO
OGC (Bob Eatinger)
DD/OCA
C/IP&CRD
C/RDP/MSG/OIT

FROM: John Pereira
Historical Review Group

SUBJECT: JFK Assassination Records
Proposed Regulations

Please review attached draft comments on the proposed regulations prepared by the JFK Assassination Review Board. Our deadline for comments to the Board is 10 March, so please send me or Barry Harrelson your suggestions by cob 9 March

John Pereira

John Pereira

Attachments

14-00000

8 Mar

Mr. David Marwell

Dear David,

We appreciate the opportunity to comment on the Assassination Records Review Board's proposed interpretive regulations as published in the Federal Register, February 8, 1995. We recognize the value of providing guidance for those who are responsible for implementing the Assassination Records Collection Act.

Our general view is that the regulations are comprehensive in identifying the range of records that would potentially be relevant to the JFK assassination or the scope of the investigations into the assassination.

In a few sections of the regulations the wording seems somewhat overly broad or the meaning is not clear. Attached for the Board's consideration are comments on these sections. In some parts of the text we suggest possible changes in wording for purposes of clarification.

We would be pleased to discuss these comments at the Board's convenience. It is our intention to continue cooperating fully with the Board and to make every effort to release assassination records held by the Agency.

John F. Pereira
Historical Review Group, CIA

Following are CIA's comments on specific sections of the Assassination Records Review Board's interpretive regulations, as published in the Federal Register, February 8, 1995.

1. Section 1400.1 Interpretation of Assassination Record

In paragraph (a) the reference to "activities and events that may have led to the assassination--" seems overly broad, and appears to go beyond the limits established in the Assassination Records Collection Act. We believe that it would be helpful to include an articulable standard in this section. The present text would permit inconsistent application of the regulations, which might encourage massive and expensive, additional records searches that are of doubtful value.

The following change is suggested in paragraph (a):

"activities and events that may <u>reasonably be considered to</u> have led to the assassination--" (This would be consistent with the Act.)

2. Section 1400.2 Interpretation of additional records and information

Paragraph (a) raises a question as to the purpose and definition of "additional records and information." The meaning of the phrase "all documents used--during declassification review of assassination records as well as all other documents--"seems unclear. Is it the intention to include any document, book, index, record system, etc. regardless of relevance to the assassination or investigations, including for example, legal opinions ? We assume that the purpose is to enable the Board to request and review additional records.

We suggest that the section be made more specific, including a clearer statement of the intent. For example, with respect to cryptonyms, codewords, guides, etc. a more precise link to events related to the assassination or to a timeframe could be helpful.

3. Section 1400.5 Requirement that assassination records be released in their entirety

The introductory paragraph specifies that "no portions of any assassination record shall be withheld--solely on grounds of non-relevance." This appears to open the door for access to entire documents that contain information on sensitive activities even when the documents contain information that is only incidental to the assassination, such as a passing reference to a name. There is a potential risk that sensitive, non-relevant sources and methods would be compromised.

We suggest that the Board consider adding wording to this section that accommodates those instances when there is a need to release ample information from a document to disclose assassination-related material, while still protecting obviously unrelated, sensitive information. The Board, of course, would continue to have access to the entire record.

4. Section 1400.7 Additional guidance

Paragraph (d) states "any records identified with respect to a particular person also includes any records for that person by any other name, pseudonym, codeword," etc. This appears to require that all records on any individuals who are merely mentioned in an assassination record be made available. Is the objective really to assure that all files on an individual or activity be made available regardless of the labels on the files ? If so, we suggest that the text be modified to reflect this.

14-00000

In the letter to David, I would add at the end of the third paragraph:

"Our Office of General Counsel provided some legal comments on the scope of the definition that we've included in the attached."

In the attachment under the comments to Section 1400.1:

After the first sentence, ending with "beyond the limits established by the [ARCA]", I suggest adding the following sentences:

"The Act authorized the Board to issue interpretive regulations. Interpretive regulations, while entitled to great deference, cannot be inconsistent with the congressional intent to cover only certain specific activities. Rather, they should stay within the clearly articulated definitions provided by Congress. This is particularly important with respect to the definition of "assassination records" since the ARCA has a overriding effect on other statutory grants of power found necessary in the interests of national security, such as the National Security Act's direction that the Director of Central Intelligence protect intelligence sources and methods from unauthorized disclosure. The ARCA provides a statutory standard for protecting or "postponing" intelligence sources and methods" that applies only to "assassination records." The standard in the ARCA restricts those sources and methods that can be protected in assassination records. The Review Board is given the ultimate authority to apply that standard, subject to being overridden only by the President. Thus, the ARCA reflects a congressional desire to limit the DCI's authority to protect sources and methods, but only for "assassination records" as ARCA defined it. An interpretive definition by the Board that would sweep in records not covered by the Act, we believe, would exceed the Board's limited rulemaking authority. Thus, the proposed definition should be limited more clearly to those records identified by Congress as "assassination records. To do this, we believe ...."

2. General Comment

This page is Extract From 3/10/95

In the letter to David, I would add at the end of the third paragraph:

"Our Office of General Counsel provided some legal comments on the scope of the definition that we've included in the attached."

In the attachment under the comments to Section 1400.1:

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"The Act authorized the Board to issue interpretive regulations. Interpretive regulations, while entitled to great deference, cannot be inconsistent with the congressional intent to cover only certain specific activities. Rather, they should stay within the clearly articulated definitions provided by Congress. This is particularly important with respect to the definition of "assassination records" since the ARCA has a overriding effect on other statutory grants of power found necessary in the interests of national security, such as the National Security Act's direction that the Director of Central Intelligence protect intelligence sources and methods from unauthorized disclosure. The ARCA provides a statutory standard for protecting or "postponing" intelligence sources and methods" that applies only to "assassination records." The standard in the ARCA restricts those sources and methods that can be protected in assassination records. The Review Board is given the ultimate authority to apply that standard, subject to being overridden only by the President. Thus, the ARCA reflects a congressional desire to limit the DCI's authority to protect sources and methods, but only for "assassination records" as ARCA defined it. An interpretive definition by the Board that would sweep in records not covered by the Act, we believe, would exceed the Board's limited rulemaking authority. Thus, the proposed definition should be limited more clearly to those records identified by Congress as "assassination records. To do this, we believe ...."

2. Following are comments on specific sections of the Assassination Records Review Board's interpretive regulations, as published in the Federal Register, February 8, 1995.

a. Section 1400.1 Interpretation of Assassination Record

In paragraph (a) the reference to "activities and events that may have led to the assassination--" seems overly broad, and appears to go beyond the limits established in the Assassination Records Collection Act. We believe that it would be helpful to include an articuable standard in this section. The present text would permit inconsistent application of the regulations, which might encourage massive and expensive, additional records searches that are of doubtful value.

The following change is suggested in paragraph (a):

"activities and events that may reasonably be considered to have led to the assassination--" (This would be consistent with the Act.)

b. Section 1400.2 Interpretation of additional records and information

Paragraph (a) raises a question as to the purpose and definition of "additional records and information." The meaning of the phrase "all documents used--during declassification review of assassination records as well as all other documents--"seems overly broad and unclear. As presently worded, this section would appear to include any document, book, index, record system, etc. regardless of relevance to the assassination or investigations, including for example, legal opinions. We assume that the purpose is to enable the Board to request and review additional records.

We suggest that the section be made more specific, including a clearer statement of the intent. For example, with respect to cryptonyms, codewords, guides, etc. a more precise link to events related to the assassination or to a timeframe could be helpful.

c. Section 1400.5 Requirement that assassination records be released in their entirety

The introductory paragraph specifies that "no portions of any assassination record shall be withheld--solely on grounds of non-relevance." This appears to open the door for access to entire documents that contain information on

sensitive activities even when the documents contain information that is only incidental to the assassination, such as a passing reference to a name. There is a potential risk that sensitive, non-relevant sources and methods would be compromised.

We suggest that the Board consider adding wording to this section that accommodates those instances when there is a need to release ample information from a document to disclose assassination-related material, while still protecting obviously unrelated, sensitive information. The Board, of course, would continue to have access to the entire record.

d. Section 1400.7 Additional guidance

Paragraph (d) states "any records identified with respect to a particular person also includes any records for that person by any other name, pseudonym, codeword," etc. This appears to require that all records on any individuals who are merely mentioned in an assassination record be made available. We assume that the purpose is more specific i.e., to assure that all files on an individual or activity be made available regardless of the labels on the files. We suggest that the text be modified to reflect this.

1 March 1995

MEMORANDUM FOR: John Pereira
Barry Harrelson
CSI/HRG

FROM: Kathryn I. Dyer
DI/IRO

SUBJECT: Comments--ARRB Proposed Interpretive Regulations

1. I have reviewed the proposed interpretive regulations drafted by the Assassination Records Review Board, particularly the sections addressing the ARRB's interpretation of the scope of certain provisions of the Assassination Records Collection Act. While I have comments on a number of sections, there is one section in particular which raises serious concerns--principally 1400.2 regarding additional information and records.

2. As presently worded, this section opens up significant records which have nothing to do per se with the assassination, and which are currently protected by various laws, including the National Security Act of 1947, and, moreover, are exempt from disclosure under the Freedom of Information Act.

For example, (d) Organizational charts of government agencies.
(e) Records necessary and sufficient to describe the the Agency's:
(1) Records policies and schedules;
(2) Filing systems and organization; and
(3) Storage facilities and location.

Items (a) and (b) of this section (1400.2) also pose similar problems in that (a) includes all documents <u>used</u> by agencies during their declassification review...This includes <u>all</u> materials including omnibus classification guides or other materials (i.e. not merely those prepared for use in the JFK review) which would identify sensitive material across the board. Similarly, item (b) includes materials "created <u>or used by</u> agencies in furtherance of their review...." This entire section should at a minimum be restricted to items created by agencies for use in the assassination reviews. For example, if the DO has a master list of cryptonyms, some of which appear in JFK documents, only the subset should be included. Generic categories of information which stand alone on their own merits should be omitted.

Recommend: Delete items (d) and (e). Subpart (a) should be confined to documents created by agencies (vice used) during their declassification review.

The inclusion of generic categories of information, i.e., those created independent of the assassination investigation(s) and review effort, appears to be a calculated effort to gain access to significant areas of information that are protected by other laws (i.e., circumvention of the FOIA.)

If provisions (d) and (e) are not deleted and a and b not limited to materials created by or created solely for use in the assassination review, an additional section should be added that applies to section 1400.2 in its entirety. This should state that information created independent of the assassination review will be released unless protected by other laws, Executive Orders, and/or regulations.

3. Other Comments:

1400.1 (a)

Recommend: Insert the word "reasonably" between "may have [reasonably] led to the assassination..."

The mere allegation that foreign events or international developments may have led to the assassination at this point in time (after all the investigations) should not bring records not related to the assassination on their face within the scope of this act. There should be an objective standard, i.e., reasonable person threshold. Otherwise agencies could be subjected to massive records searches on little more than whim. The JFK assassination is the epitome of conspiracy theories. Without a threshold standard, the door would be opened to additional searches (without merit), the potential costs of which could be significant.

1400.6 Originals and copies.

Recommend: (2) and (3) Add the word "available" after "the earliest generation print [available]."

Otherwise no provision to cover situation when earliest generation print can't be located.

1400.8 Implementing the ARCA - Catalog of Assassination Records. (COAR)

Sections (a) and (c) appear to be inconsistent. As presently worded, former specifies all records will be listed in COAR; latter section implies not all records will be listed, i.e., requirement that in listing one must determine that the record will more likely than not enhance, enrich....

4. If any questions, please call 54644 (secure).

Kathryn I. Dyer

NOTE FOR: John F. Pereira @ DCI
FROM: Eldon I. Hatch @ DA @ DCI
DATE: 02/21/95 02:15:20 PM
SUBJECT: Comments re the JFK Assassination Records Collection Act of 1992

1. In general there is not much in the regulation to cause the DA undo concern except for Sec. 1400.2 Interpretation of additional records and information; specifically (e), (1), (2), & (3). The schedules are classified in the agregate, filing systems and organization structures are classified in toto, and the storage facility is an Agency Records Center at a classified location. I know this may not be a lot of help, but I have little or no argument/comment concerning the other sections.

2. If you have any questions/comments, please call me on 30683 or note.

CC:

Central Intelligence Agency
Washington, D.C. 20505

22 February 1995

Executive Secretariat
Information Review Officer

John F. Pereira
Historical REview Group

Attn: Barry Harrelson

Barry,

Do not agree with "no portions of any assassination records shall be withheld from public disclosure solely on grounds of non-relevance." See Section 1400.5. Non-relevant material should not have to be reviewed for declassification & release. This could be a never-ending project.

Thanks for the opportunity to comment.

Eunice M. Evans
DCI/IRO

1 March 1995

MEMORANDUM FOR: Mr. Periera

FROM: Gary Breneman

SUBJECT: Comments on Proposed Rules, 36 CFR Part 1400, Concerning JFK Records Collection Act of 1992

1. You asked that I review subject proposed rules and provide my thoughts and concerns. This is in response to that request.

2. As a general statement, the proposed rules are not well written and seem to try to cast the biggest net possible. With reference to poor draftsmanship, note that at Sec.1400.2, they introduce a term "additional information and records," and describe what the term includes. Compare sections 1400.3 relating to "sources" and 1400.4 relating to "(t)ypes of materials." In the latter, they have reversed the term and used "additional records and information." While the intent is fairly clear, it causes one to wonder what they had in mind.

3. With reference to the big net approach, it is a basic rule of statutory and regulatory drafting to not write laws and regulations which cannot be enforced. In this regard, I know of no authority in U.S. law, including the JFK Act, which would give the Board jurisdiction over records which "may be located at, or under the control of,"..."(f)oreign governments." See 1400.4 (b). I have a similar concern with respect to "private" records. Cf. Sec. 1400.1 (a).

4. On the nonsensical side of the big net approach is every book, magazine and newspaper article and which has ever been written that may "report, analyze, or interpret" the assassination. See 1400.1 (a). If read literally, the Agency would have to give up all of its collections of private books, etc. which fall within this definition. This is particularly true of those books we referred to here within HRG for information and understanding as we conducted the review. See 1400.2 (a) -- (a)ll documents used by government offices and agencies during their declassification review of assassination records..."

14-00000

5. With specific reference to the requirement of 1400.2 (a), the Agency should be concerned about its records within the DO which tie crypts to true names of projects and alias' and pseudos to the true names of individuals. Because we regularly called the DO office responsible for these matters for assistance in identifying the projects and names behind the crypts and alias,' this subsection would seem to place those document holdings within the reach of the Board. This needs to be addressed.

5. Turning to 1400.7 (d), the Agency should be very careful here. In HRG's review and release of documents, we have often given out an alias but protected the true name. In others, we have given out the true name but protected the alias or pseudo. This section seems to vitiate that effort and needs to be addressed.

6. I have several thoughts on the non-relevant issue which would take several more paragraphs. Suffice it to say, carried to its extreme, if the Board can in any way make the case a document is an assassination record, then they are entitled to access to it and may direct its release.

7. I would be pleased to discuss any of these items with you if you wish.

Gary M. Breneman

2 March 1995

Assassination Record Definition: Comments

Background Section:

[the statement *"search and disclosure of records...must go beyond the records of previous commissions..."* is based on a similar statements on pages 19 & 21 of the Report to accompany S. 3000]

Section 1400.1 - Interpretation of Assassination Record
*(a)"An assassination record includes,...,all records...that **may** have led to the assassination..."*

[S.3006 states that the "Board should act on a reasonable basis in requesting additional records. Recommend we insert "**reasonably**" into statement after "have" (or change may to reasonably could)]

(b)(2)"All records...or segregated by all Federal...agencies in conjunction with any investigation..."

[means all "microfilm" documents are assassination records, and will have to be reviewed and accounted for even if we are successful in "postponing" most of these records]

1400.2 Interpretation of additional records and information.
*(a) "All documents **used** by government offices and agencies during their declassification review of assassination records as well as **all other documents, indices, records, and other material that disclose cryptonyms, code names, or other identification material in assassination records.**"*

[Section (a) is too inclusive; as written would include ANY document, book, index, record system or other material consulted or "used" during the review, regardless of relevance to JFK assassination. In fact, most of the material "used" in the review was used to determine if information/names/etc. had been previously released and had nothing to do with the assassination or investigations.

Also the part of the statement following "as well as" needs clarification. Are they asking for all records that contain information on individuals mentioned in assassination records or are they asking for the records/indices/etc. that were used to identify individuals mentioned by crypt or code name in assassination records.

[the amendment recommended by FBI covers CIA concerns; ideally the word "used" should be changed to "created"]

1400.2 (continued)
(b) & (c) [ok]
(d) & (e) [add wording to identify time period for these records such as **"at the time of the assassination and investigations"**.]

1400.5 Requirement that assassination records be released in their entirety.
An assassination record shall be disclosed in its entirety except for portions specifically postponed...,and ***no portions*** *of* ***any*** *assassination* ***records*** *shall be* ***withheld from public disclosure solely on grounds of non-relevance.***

[If this applies to an "individual" assassination record then there is no problem. However, if it applies, as I suspect, to files and groups of records then we have a major problem of privacy and source protection with the OP and 201 files. It may be possible to "postpone" the 201 and OP files under the Privacy exemption and National Security Act, however, the FBI approach to amending the regulation to deal with **"incidental appearance of assassination material"** seems a better approach. Our proposed amendment should include **"files"** as well as "records".

1400.6 Originals and Copies
(a)(2) add "available" after *"the earliest generation print"*
(b) in cases where a copy, as defined in paragraph (a) of this section is authorized...the board may...require a certified copy.

[In some cases our file copy or original is a previously sanitized copy of the document; we may have to "certify" theses copies as the "original" file copy.]

1400.7 Additional guidance
(d)...Any records identified with respect to a particular person also includes any records for that person by any other name, pseudonym, codeword, symbol, number or cryptonym...

[This needs clarification. It the goal of this section is to ensure that all files on an individual/project are provided regardless of how filed (under name, crypt, etc.) then I do not see a problem. However, with out clarifying language, this section could lead to the type of situation described by Gloria. FBI also requested clarification.]

Issues:

Non-related (36,000+ pages) and OP (10,000 pages) material in microfilm collection

The "segregated" records statement negates our claim that material in the Microfilm is "non-related". We can point out that the HSCA requested, but did not review a lot of these records and that access was given to complete files even thought the request dealt with specific events or timeframes. However, given their objective of going "beyond" previous investigations, I not sure this would have any impact.

A different approach would be to deny or postpone personnel type files including 201s that are not related to the assassination (guidelines to be established in consultation with the Board) as unwarranted invasion of privacy and/or protection of sources. Approximately 25,000 pages of the Non-related material are from 201 files; the remaining 10,000+ pages are from organization and project files.

10 March

To: C/HRG

Subject: OGC's comments on proposed JFK regulations.

Bob's comments should be included in our response to the Board, however, not as he has recommended. The language and tone is very different and does not inserted well into existing text; I think his comments will work better as a separate paragraph or as an addendum.

Barry

10 March 1995

MEMORANDUM FOR: J. Barry Harrelson @ DA

FROM: John F. Pereira

SUBJECT: JFK Assassination Records Proposed Regulations

REFERENCE:

10 March 1995

MEMORANDUM FOR: John F. Pereira @ DA

FROM: William H. McNair
DO/IRO

SUBJECT: JFK Assassination Records Proposed Regulations

REFERENCE: CSI-0319/95, subject as above, dtd 8 March 1995

1. The DO concurs in ref comments and would add the following:

A. Comment Par 2 re Section 1400.2 - para d and e(3) call for "Organizational charts of government agencies" and "Records necessary and sufficient to describe and agency's storage facilities and locations".

Organizational charts of detail are classified and release would have to be balanced against DCI mandate to protect such details.

Description and location of agency's storage facilities are classified and release of such information would have to be balanced against security concerns and DCI mandate to protect such information.

B. Comment 4 re Section 1400.7 - Consideration should be given to protect records and files of different time frame not related to JFK where the subject is but a passing name or reference. To reveal full records could endanger national security without adding to body of information relating to JFK.

2. Believe these two comments should be considered for inclusion into official CIA remarks.

CC:

CC:

NOTE FOR: John Pereira @ DCI
Barry Harrelson @ DCI
FROM: Kathryn I. Dyer @ DI @ DCI
DATE: 03/10/95 08:13:32 AM
SUBJECT: Comments re Assassination Records Review Board's Interpretive Regulations

1. I have reviewed the draft comments prepared for the Agency regarding the AARB's proposed interpretive regulations and believe some modifications are in order.

2. First and foremost, the comments regarding Section 1400.2 do not adequately address the concerns previously raised regarding the unbridled inclusion of categories of records that have nothing to do with JFK's assassination, e.g., organization charts, records schedules, filing systems, etc. This section should be limited to items created by agencies for use in the assassination review. Generic categories of information which stand alone on their merits should be included. This section is overly broad and inclusive. (Please see the discussion in my 1 March memorandum.) Contrary to the proposed comment that the <u>intent</u> of this section is "unclear", I think it is eminently clear, and that's the problem. I think our concerns would be better served by raising in terms of scope rather than intent. Also recommend against asking questions such as "Is it the intent...?" Heck, yes! Would suggest wording along the lines--"As presently worded, this section would appear to include...."

3. The proposed comment on Section 1400.7 opens the door to all records on a person vice those relevant to the assassination inquiries. Do we really want to set ourselves up for the obvious response to the question we are asking? There are a number of different points here that need to be clarified, all dealing with scope. The board's legitimate concern that all records on an individual records be addressed (regardless of how filed, e.g.under another name, pseudonym, etc.). And an equally legitimate Agency concern that
1.) records on an individual when the records themselves are not relevant to the assassination inquiry, (i.e. other records on the individual may be), or 2.) that all records on individuals who merely happen to be mentioned in a document falling within the scope of the assassination inquiry (but the individuals themselves are not the subject of investigation) should not be subsumed within the scope of these regulations.

CC:

14-00000

To: C/HRG

Subject: OGC's comments on proposed JFK regulations.

1) OGC submission

Bob's comments should be included in our response to the Board, however, not as he has recommended. The language and tone is very different and does not inserted well into existing text; I think his comments will work better as a separate paragraph or as an addendum.

2) DI IRO

Kathy's comments on section 1400.2 are on target, but a little strong. I don't think the board will buy changed "used" to "created". Our proposed response, as written, does question the scope but not directly. (note: The FBI proposed wording, if accepted by the board, would satisfactorily limit the scope of this section). She does have a point in changing "intent" to "as presently worded".

On section 1400.7, Kathy's reaction is the same as Gloria's. I think our response adequately address the concerns here, but could be strengthen without changing the tone of the response. (Note - OGC comments will also address "scope" which clearly is Kathy's primary concern.

Barry

Mr. David Marwell

Dear David,

We appreciate the opportunity to comment on the Assassination Records Review Board's proposed interpretive regulations as published in the Federal Register, February 8, 1995. We recognize the value of providing guidance for those who are responsible for implementing the Assassination Records Collection Act.

Our general view is that the regulations are comprehensive in identifying the range of records that would potentially be relevant to the JFK assassination or the scope of the investigations into the assassination.

In a few sections of the regulations the wording seems somewhat overly broad or the meaning is not clear. Attached for the Board's consideration are comments on these sections. In some parts of the text we suggest possible changes in wording for purposes of clarification.

We would be pleased to discuss these comments at the Board's convenience. It is our intention to continue cooperating fully with the Board and to make every effort to release assassination records held by the Agency.

John F. Pereira
Historical Review Group, CIA

Following are CIA's comments on specific sections of the Assassination Records Review Board's interpretive regulations, as published in the Federal Register, February 8, 1995.

1. Section 1400.1 Interpretation of Assassination Record

In paragraph (a) the reference to "activities and events that may have led to the assassination--" seems overly broad, and appears to go beyond the limits established in the Assassination Records Collection Act. We believe that it would be helpful to include an articuable standard in this section. The present text would permit inconsistent application of the regulations, which might encourage massive and expensive, additional records searches that are of doubtful value.

The following change is suggested in paragraph (a):

"activities and events that may reasonably be considered to have led to the assassination--" (This would be consistent with the Act.)

2. Section 1400.2 Interpretation of additional records and information

Paragraph (a) raises a question as to the purpose and definition of "additional records and information." The meaning of the phrase "all documents used--during declassification review of assassination records as well as all other documents--"seems unclear. Is it the intention to include any document, book, index, record system, etc. regardless of relevance to the assassination or investigations, including for example, legal opinions ? We assume that the purpose is to enable the Board to request and review additional records.

We suggest that the section be made more specific, including a clearer statement of the intent. For example, with respect to cryptonyms, codewords, guides, etc. a more precise link to events related to the assassination or to a timeframe could be helpful.

3. Section 1400.5 Requirement that assassination records be released in their entirety

The introductory paragraph specifies that "no portions of any assassination record shall be withheld--solely on grounds of non-relevance." This appears to open the door for access to entire documents that contain information on sensitive activities even when the documents contain

information that is only incidental to the assassination, such as a passing reference to a name. There is a potential risk that sensitive, non-relevant sources and methods would be compromised.

We suggest that the Board consider adding wording to this section that accommodates those instances when there is a need to release ample information from a document to disclose assassination-related material, while still protecting obviously unrelated, sensitive information. The Board, of course, would continue to have access to the entire record.

4. Section 1400.7 Additional guidance

Paragraph (d) states "any records identified with respect to a particular person also includes any records for that person by any other name, pseudonym, codeword," etc. This appears to require that all records on any individuals who are merely mentioned in an assassination record be made available. Is the objective really to assure that all files on an individual or activity be made available regardless of the labels on the files ? If so, we suggest that the text be modified to reflect this.

(o) of this section shall be completed by October 1, 1995.

* * * * *

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

5. The authority citation of subpart Z of 29 CFR Part 1926 is revised to read as follows:

Authority: Sections 6 and 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders Nos. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736) or 1-90 (55 FR 9003) as applicable, and 29 CFR part 1911.

Section 1926.1101 also issued under 5 U.S.C. 553.

Section 1926.1102 not issued under 29 U.S.C. 655 or 29 CFR part 1911, also issued under 5 U.S.C. 553.

Section 1926.1103 through 1926.1118 also issued under 29 U.S.C. 653.

Section 1926.1128 also issued under 29 U.S.C. 653.

Section 1926.1145 and 1926.1147 also issued under 29 U.S.C. 653.

Section 1926.1148 also issued under 29 U.S.C. 653.

6. Section 1926.1101 is amended by revising paragraph (q) to read as follows:

§ 1926.1101 Asbestos.

* * * * *

(q) *Dates.* (1) This standard shall become effective October 11, 1994.

(2) The provisions of 29 CFR 1926.58 remain in effect until the start-up dates of the equivalent provisions of this standard.

(3) *Start up dates.* All obligations of this standard commence on the effective date except as follows:

(i) *Methods of compliance.* The engineering and work practice controls required by paragraph (g) of this section shall be implemented by October 1, 1995.

(ii) *Respiratory protection.* Respiratory protection required by paragraph (h) of this section shall be provided by October 1, 1995.

(iii) *Hygiene facilities and practices for employees.* Hygiene facilities and practices required by paragraph (j) of this section shall be provided by October 1, 1995.

(iv) *Communication of hazards.* Identification, notification, labeling and sign posting, and training required by paragraph (k) of this section shall be provided by October 1, 1995.

(v) *Housekeeping.* Housekeeping practices and controls required by paragraph (l) of this section shall be provided by October 1, 1995.

(vi) Medical surveillance required by paragraph (m) of this section shall be provided by October 1, 1995.

(vii) The designation and training of competent persons required by paragraph (o) of this section shall be completed by October 1, 1995.

* * * * *

[FR Doc. 95-15790 Filed 6-27-95; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840-AC05

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the William D. Ford Federal Direct Loan Program to add the Office of Management and Budget (OMB) control number to certain sections of the regulations. Those sections contain information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved, and therefore affected parties must comply with them.

EFFECTIVE DATE: Information collection requirements in the final regulations are effective on July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Policy Development Division, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, SW., (Room 3053, ROB-3), Washington, DC 20202-5400. Telephone (202) 708-9406. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Final regulations for the William D. Ford Federal Direct Loan Program were published on December 1, 1994 (59 FR 61664). Compliance with information collection requirements in these regulations was delayed until those requirements were approved by OMB under the Paperwork Reduction Act of 1980. OMB approved the information collection requirements on December 7, 1994. Those requirements will therefore become effective with the other provisions of the regulations on July 1, 1995.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B), that public comment on the regulations is unnecessary and contrary to the public interest.

List of Subjects in 34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: June 23, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The Secretary amends Part 685 of Title 34 of the Code of Federal Regulations as follows:

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

1. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

2. Sections 685.204, 685.206, 685.209, 685.213, 685.214, 685.215, 685.301, 685.302, 685.303, 685.309, and 685.401 are amended by adding the OMB control number following the section to read as follows:

(Approved by the Office of Management and Budget under control number 1840-0672)

[FR Doc. 95-15844 Filed 6-27-95; 8:45 am]

BILLING CODE 4000-01-P

ASSASSINATION RECORDS REVIEW BOARD

36 CFR Chapter XIV

Guidance on Interpreting and Implementing the President John F. Kennedy Assassination Records Collection Act of 1992

AGENCY: Assassination Records Review Board.

ACTION: Final regulations.

SUMMARY: These final interpretive regulations provide guidance on the interpretation of certain terms included in the President John F. Kennedy Assassination Records Collection Act of 1992 and on implementation of certain of the statute's provisions. The final interpretive regulations make effective the proposed interpretive regulations previously published by the Assassination Records Review Board (Review Board). The Review Board revised the proposed interpretive

regulations after considering public comment received in writing and through testimony at public hearings convened by the Review Board.

EFFECTIVE DATE: These interpretative regulations are effective June 28, 1995.

FOR FURTHER INFORMATION CONTACT:
T Jeremy Gunn, Acting General Counsel, Assassination Records Review Board, 600 E Street, N.W., 2nd Floor, Washington, D.C. 20530, (202) 724-0088, fax (202) 724-0457.

SUPPLEMENTARY INFORMATION:

Background and Statutory Authority

The President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107 (as amended) (JFK Act), established the President John F. Kennedy Assassination Records Collection (JFK Assassination Records Collection) at the National Archives and Records Administration (NARA). In establishing a process for public disclosure of all records relating to the assassination, Congress created an independent Federal agency, the Assassination Records Review Board, that consists of five citizens appointed by the President and confirmed by the Senate in 1994. Under the JFK Act, the Review Board is empowered to decide "whether a record constitutes an assassination record." 44 U.S.C. 2107.7(i)(2)(A). Congress intended that the Review Board "issue guidance to assist in articulating the scope or universe of assassination records." President John F. Kennedy Assassination Records Collection Act of 1992, S. Rep. 102-328, 102d Cong., 2d Sess. (1992) at 21. These final interpretive regulations, a proposed version of which were published at 60 FR 7506-7508 (Feb. 8, 1995), comply with that mandate.

The Review Board's goal in issuing this guidance is to implement congressional intent that the JFK Collection contain "the most comprehensive disclosure of records related to the assassination of President Kennedy." S. Rep. 102-328, *supra* at 18. The Board is also mindful of Congress's instruction that the Board apply a "broad and encompassing" working definition of "assassination record" in order to achieve the goal of assembling the fullest historical record on this tragic event in American history and on the investigations that were undertaken in the assassination's aftermath. The Board recognizes that many agencies began to organize and review records responsive to the JFK Act even before the Board was appointed and began its work. Nevertheless, the Board's aim is that this guidance will aid in the ultimate assembly and public disclosure of the fullest possible historical record on this tragedy and on subsequent investigations and inquiries into it.

The final interpretive regulations are intended to identify comprehensively the range of records reasonably related to the assassination of President Kennedy and investigations undertaken in its aftermath. The final interpretive regulations are also intended to aid in the consistent, effective, and efficient implementation of the JFK Act and to establish procedures for including assassination records in the JFK Assassination Records Collection established by Congress and housed at NARA's facility in College Park, Maryland.

Notice and Comment Process

The Review Board sought public comment on its proposed interpretive regulations and set a thirty-day period, which ended on March 10, 1995, for the purpose of receiving written comments. The Review Board also heard testimony at public hearings on aspects of the proposed interpretive regulations. In addition, the Review Board sent copies of the proposed interpretive regulations to agencies known to have an interest in and to be affected by the Review Board's work, particularly those that either created or now hold assassination records, and to the appropriate oversight committees in Congress. The Review Board also sent notices of the proposed interpretive regulations and request for comments to many organizations and individuals who have demonstrated an interest in the release of materials under the JFK Act or who have engaged in research into the assassination of President Kennedy.

The Review Board received written comments on the proposed interpretive regulations from four Federal agencies, three state and local government entities, and twenty-one private individuals and organizations with an interest in the Review Board's work. Federal agencies providing written comments include the Federal Bureau of Investigation (FBI), the Central Intelligence Agency (CIA), NARA, and the Department of State. State or local government entities providing written comments include the Dallas (Texas) County Commissioner's Court, the Dallas County Historical Foundation, and the City of Dallas Records Management Division of the Office of the City Secretary.

Prior to publication of the proposed interpretive regulations, the Review Board heard testimony at a public hearing held at the Review Board's offices on December 14, 1994, from representatives of NARA on the question of including artifacts in the scope of the term "assassination record." After publication of the proposed interpretive regulations and before expiration of the comment period, the Review Board heard testimony at a public hearing on March 7, 1995, from the FBI and from several individuals and representatives of private organizations on their views regarding the text of the proposed interpretive regulations. Copies of all written comments received and transcripts of public testimony on the proposed interpretive regulations were placed in the public reading room at the Review Board's offices and made available for inspection and copying by the public upon request.

At a public meeting held on May 3, 1995, for which notice was timely published in the Federal Register pursuant to the provisions of the Government in the Sunshine Act, the Review Board considered a final draft of these interpretive regulations. That discussion draft incorporated many of the comments received by the Review Board on the proposed interpretive regulations. The Review Board unanimously voted to adopt the text of the discussion draft as its final interpretive regulations. The approved text is, with a few minor corrections that do not change the substance, published here.

Response to Comments

The Review Board found very helpful the thoughtful and, in many cases, very detailed comments submitted on the proposed interpretive regulations. Nearly all of the commentators expressed support for what they characterized as the proposed interpretive regulations' comprehensiveness and flexibility. All comments submitted were carefully studied and considered by the Review Board. Submitters made both substantive and technical suggestions, many of which were incorporated into the interpretive regulations as issued here in final form. The summary below includes the principal substantive comments received and the Review Board's responses thereto.

Comment. The proposed language of § 1400.1(a) is unduly restrictive because the phrase "may have led to the assassination" requires at least a potential causal link to the assassination. Moreover, determining whether there is a causal link would require the Review Board to evaluate the validity of competing accounts of what

led to the assassination of President Kennedy

Response: A number of commentators put forward criticisms along these lines. Some of these commentators suggested that some form of a "reasonably related" standard be substituted for the "may have led to" language, while others suggested alternative formulations (e.g., "that may shed light on the assassination"). In adopting and eventually applying a "reasonably related" standard, the Review Board does not seek to endorse or reject any particular theory of the assassination of President Kennedy, although such theories may inform the Review Board's search for records reasonably related to the assassination and investigations into it. The Review Board believes that § 1400.1(a), as now worded, advances that effort and will promote a consistent broad interpretation and implementation of the JFK Act.

Comment: The proposed language of § 1400.1(a) is too broad and open-ended. A more specific nexus to the assassination of President Kennedy should be required.

Response. As its text and legislative history make clear, the JFK Act contemplates that the Review Board extend its search for relevant records beyond what has been compiled or reviewed by previous investigations. It is inevitable, therefore, that the Review Board must exercise judgment in determining whether such records constitute "assassination records." The Review Board regards its "reasonably related" standard as sufficient to ensure that agencies are not overburdened with identifying and reviewing records that, if added to the JFK Assassination Records Collection, would not advance the purposes of the JFK Act

Comment: Section 1400.1 should specifically include as assassination records any records pertaining to particularly identified individuals, organizations, events, etc.

Response: The Review Board determined that, in almost every case, the types of records commentators sought to add were already adequately covered by § 1400.1 as proposed. Accordingly, the Review Board declined to include records or record groups at the level of specificity urged by these commentators because doing so might limit the scope of the interpretive regulations as applied initially by other agencies, or otherwise might prove duplicative or confusing. However, the Review Board welcomes and encourages suggestions from the public as to specific records or record groups that may constitute assassination records, and intends to pursue such leads, including those provided in the written comments to the proposed interpretive regulations

Comment: Section 1400.2(a) is vague and overly broad in describing the scope of additional records and information

Response: The Review Board has added language to clarify that the purpose of requesting additional records and information under § 1400.2(a) is to identify, evaluate, or interpret assassination records, including assassination records that may not initially have been identified as such by an agency. The Review Board also has added language to indicate that it intends to implement this section through written requests signed by its Executive Director. The Review Board contemplates that, with regard to such requests, its staff will work closely with entities to which such requests are addressed to implement the JFK Act effectively and efficiently.

Comment. The scope of additional records and information should specifically include records and information that:

—describe agencies' methods of searching for records;
—describe reclassification, transfer, destruction, or other disposition of records; or
—do not constitute assassination records, but have the potential to enhance, enrich, and broaden the historical record of the assassination.

Response. To the extent that the inclusion of records and information of the types described would assist the Review Board in meeting its responsibilities under the JFK Act, the Review Board has adopted the suggested language

Comment. The scope of "assassination records" under § 1400.1 and "additional records and information" under § 1400.2 should not extend to state and local government or to private records that are not in the possession of the Federal government.

Response The Review Board considered such comments carefully, but concluded that the terms of the JFK Act preclude the narrower reading of the Review Board's responsibilities urged by such comments. Section 1400.6 allows the Review Board, in its discretion, to accept copies in lieu of originals. The Review Board believes that this flexibility addresses the concerns of some commentators about the removal of original records already housed, for example, in state or local archives

Comment: Section 1400.3 should include as sources of assassination records and additional records and information individuals and corporations that possess such material even if not obtained from sources identified in paragraphs (a) through (e) thereof, and should specifically include individuals and corporations that contracted to provide goods or services to the government.

Response: The Review Board has added paragraph (f) to this section in response to these comments. The Review Board has concluded that, in view of paragraph (f), specifically identifying government contractors or other private persons would be unnecessary and redundant.

Comment. NARA contended that § 1400.4 should not include artifacts among the types of materials included in the term "record." Treating artifacts as "records" would be contrary to NARA's accustomed practice and the usage of the term "records" in other areas of Federal records law and would result in substantial practical difficulties.

Response: The Review Board has carefully considered NARA's objections to the inclusion of artifacts as "records," but decided that this inclusion is necessary to achieve the purposes of the JFK Act. The Review Board notes that artifacts that became exhibits to the proceedings of the Warren Commission have long been in the custody of NARA, and decided that these artifacts should remain in the JFK Assassination Records Collection. The Review Board further believes that the unique issues of public trust and credibility of government processes that prompted enactment of the JFK Act require that artifacts be included within the JFK Assassination Records Collection. The strong support that commenting members of the public gave to this position reinforces this conclusion. The Review Board included in its proposed regulations, and retained in § 1400.7(b)–(c) of the final interpretive regulations, language intended to address NARA's concerns about potential copying requirements and preservation issues unique to artifacts.

Comment: Section 1400.5 should be modified to allow agencies to withhold from the JFK Assassination Records Collection material that is not related to the assassination of President Kennedy, even though it appears in a record that contains other material that is related to the assassination of President Kennedy.

Response: It remains the intent of this section to make clear to agencies that, as a rule, entire records, and not parts thereof, are to become part of the JFK Assassination Records Collection. The purpose of requiring that records be produced in their entirety is to ensure

that the context and integrity of the records be preserved. Only in rare instances will the Review Board assent to withholding particular information within an assassination record on the ground that such information is not relevant to the assassination. Section 1400.5 has been modified to clarify that, although the Review Board may allow this practice in extraordinary circumstances, this determination is within the sole direction of the Review Board.

Comment: The discussion of originals and copies in § 1400.6 is, in various respects, unclear and confusing.

Response: The Review Board made extensive changes to this section to address these concerns and to achieve greater internal consistency. The Review Board's intent in this section is to express its strong preference for including original records in the JFK Assassination Records Collection, but also its understanding that, for a variety of reasons, there may be situations where a copy instead of the original of an assassination record may be more appropriate for inclusion in the Collection.

Comment: Section 1400.6 should be clarified as to whether "record copies" of Federal agency may be included in the JFK Assassination Records Collection.

Response: The Review Board has modified § 1400.6(a)(1) to clarify that the Review Board may determine that record copies may be included in the Collection.

Comment: The Catalog of Assassination Records (COAR) described in § 1400.8 should consist of, or be replaced by, the database and finding aids prepared by the Federal agencies in possession of assassination records.

Response: This and other comments received regarding the proposed § 1400.8 indicated some confusion as to the intent and operation of the mechanism established in this section. For this reason, the Review Board decided to replace the term "Catalog of Assassination Records" with the term "Notice of Assassination Record Determination" (NARD), and to redraft this section to clarify the Review Board's intent to use the NARD mechanism simply to document the Review Board's ongoing determinations that, in addition to records explicitly enumerated in the JFK Act as assassination records (e.g., records reviewed by the HSCA) or identified by Federal agencies in their own searches, certain other records also are assassination records to be included in the JFK Assassination Records Collection.

Section by Section Analysis

Scope of Assassination Record

As discussed above with regard to the public comments, subparagraph (a) of § 1400.1 has been modified to adopt a "reasonably related" standard and the term "Catalog of Assassination Records" has been replaced with "Notice of Assassination Record Determination" in subparagraph (b)(3). The final interpretive regulations also incorporate suggested technical changes, including edits for clarification and revision of this section's title to make it more precise.

Scope of Additional Records and Information

The title of § 1400.2 was revised to conform to the new title of § 1400.1. Additional editing changes were made for clarity. A new subpart (G) was added to subparagraph (e) and a new subparagraph (f) was added after consideration of comments that noted the potential exclusion of certain categories from the scope of this section in the proposed interpretive regulations. The Review Board has added language in the final interpretive regulations to clarify that the purpose of this section is to aid in identifying, evaluating or interpreting assassination records, including assassination records that may not initially have been identified by an agency. The Review Board also has added language to suggest that it intends to implement this section through written requests signed by the Review Board's Executive Director.

Sources of Assassination Records and Additional Records and Information

A new subparagraph (g) was added to § 1400.3 after consideration of comments noting the potential exclusion of records created by individuals or corporations or obtained from sources other than those already identified in the previous subparagraphs.

Types of Materials Included in Scope of Assassination Record and Additional Records and Information

No substantive change has been made to § 1400.4 as it appeared in the proposed interpretive regulations.

Requirement That Assassination Records be Released in Their Entirety

Language has been added to § 1400.5 to permit the Review Board, in its sole discretion, to allow release of only part of an assassination record where such partial release is sufficient to comply with the intent and purposes of the JFK Act.

Originals and Copies

Extensive changes were made to § 1400.6 for reasons of clarity and internal consistency. The Review Board also incorporated in the final interpretive regulations language clarifying that "record copies" of Federal agency records may be included in the JFK Assassination Records Collection and addressing the important issue of preservation requirements. In this respect, the Review Board sought to treat records in various media in a means appropriate to the unique characteristics of each medium.

Additional Guidance

In the light of comments received, the Review Board extensively revised § 1400.7. Subparagraph (d), as it appeared in the proposed interpretive regulations, has been broken into three subparagraphs—new subparagraphs (d), (e), and (f)—to avoid potential confusion and to add clarity. The intent of these subparagraphs is to make clear that all files on an individual, event, organization or activity are to be made available to the Review Board regardless of the labels on the files, where the records may be found, or whether they reflect the true name or identifier of the individual, event organization, or activity.

Subparagraphs (b) and (c) § 1400.7 were included in the proposed interpretive regulations and retained in the final interpretive regulations in order to address concerns expressed by NARA regarding the inclusion of artifacts in the scope of the material deemed "assassination records." By including these subparagraphs, the Review Board wishes to make it clear that it believes the JFK Act establishes unique standards as to the records to be included in the JFK Assassination Records Collection. By including artifacts as a type of "assassination record," the Review Board seeks to fulfill its mandate from Congress to assemble all materials reasonably related to the assassination in the JFK Assassination Records Collection. It is not intended that the inclusion here of artifacts for purposes of implementing the JFK Act should be construed to affect the implementation of other records laws. Subparagraph (c) is intended to ensure that all artifacts in the collection are preserved for posterity and that public access be provided to those artifacts in a manner consistent with their preservation. The Review Board encourages NARA to set out in writing the terms and conditions under

which access to such materials shall be allowed.

Implementing the JFK Act—Notice of Assassination Records Determination

The Review Board has replaced the term "Catalog of Assassination Records" that appeared in the proposed interpretive regulations and redrafted § 1400.8 to clarify the Review Board's intent. In the final interpretive regulations, the Review Board substitutes the term NARD for prior references to a "catalog."

Paperwork Reduction Act Statement.

The regulation is not subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) because it does to contain any information collection requirements within the meaning of 44 U.S.C. 3502(4).

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612), the Board certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared. 5 U.S.C. 605(b). The proposed rule would not impose any obligations, including any obligations on "small entities," as set forth in 5 U S C 601(3) of the Regulatory Flexibility Act, or within the definition of "small business," as found in 15 U S C 632, or within the Small Business Size Standards in regulations issued by the Small Business Administration and codified in 13 CFR part 121.

Review by OMB

This regulation has been reviewed by OMB under Executive Order 12866.

List of Subjects in 36 CFR Part 1400

Administrative practice and procedure, Archives and records

Accordingly, the review Board hereby establishes a new chapter XIV in title 36 of the Code of Federal Regulations to read as follows

CHAPTER XIV—ASSASSINATION RECORDS REVIEW BOARD

PART 1400—GUIDANCE FOR INTERPRETATION AND IMPLEMENTATION OF THE PRESIDENT JOHN F. KENNEDY ASSASSINATION RECORDS COLLECTION ACT OF 1992 (JFK ACT)

Authority. 44 U.S.C. 2107.

§ 1400.1 Scope of assassination record.

(a) An *assassination record* includes, but is not limited to, all records, public and private, regardless of how labeled or identified, that document, describe, report on, analyze or interpret activities, persons, or events reasonably related to the assassination of President John F Kennedy and investigations of or inquiries into the assassination.

(b) An *assassination record* further includes, without limitation:

(1) All records as defined in Section 3(2) of the JFK Act.

(2) All records collected by or segregated by all Federal, state, and local government agencies in conjunction with any investigation or analysis of or inquiry into the assassination of President Kennedy (for example, any intra-agency investigation or analysis of or inquiry into the assassination, any interagency communication regarding the assassination, any request by the House Select Committee on Assassinations to collect documents and other materials; or any inter- or intra-agency collection or segregation of documents and other materials).

(3) Other records or groups of records listed in the Notice of Assassination Record Designation, as described in § 1400.8 of this chapter.

§ 1400.2 Scope of additional records and information

The term *additional records and information* includes

(a) All documents used by government offices and agencies during their declassification review of assassination records as well as all other documents, indices, and other material (including but not limited to those that disclose cryptonyms, code names, or other identifiers that appear in assassination records) that the Assassination Records Review Board (Review Board) has a reasonable basis to believe may constitute an assassination record or would assist in the identification, evaluation or interpretation of an assassination record. The Review Board will identify in writing those records and other materials it intends to seek under this section

(b) All training manuals, instructional materials, and guidelines created or used by the agencies in furtherance of their review of assassination records.

(c) All records, lists, and documents describing the procedure by which the agencies identified or selected assassination records for review.

(d) Organizational charts of government agencies.

(e) Records necessary and sufficient to describe the agency's:

(1) Records policies and schedules;

(2) Filing systems and organization;

(3) Storage facilities and locations;

(4) Indexing symbols, marks, codes, instructions, guidelines, methods, and procedures;

(5) Search methods and procedures used in the performance of the agencies' duties under the JFK Act; and

(6) Reclassification to a higher level, transfer, destruction, or other information (*e.g.*, theft) regarding the status of assassination records.

(f) Any other record that does not fall within the scope of assassination record as described in § 1400.1, but which has the potential to enhance, enrich, and broaden the historical record of the assassination.

§ 1400.3 Sources of assassination records and additional records and information.

Assassination records and additional records and information may be located at, or under the control of, without limitation:

(a) Agencies, offices, and entities of the executive, legislative, and judicial branches of the Federal Government;

(b) Agencies, offices, and entities of the executive, legislative, and judicial branches of state and local governments;

(c) Record repositories and archives of Federal, state, and local governments, including presidential libraries;

(d) Record repositories and archives of universities, libraries, historical societies, and other similar organizations,

(e) Individuals who possess such records by virtue of service with a government agency, office, or entity;

(f) Persons, including individuals and corporations, who have obtained such

records from sources identified in paragraphs (a) through (e) of this section.

(g) Persons, including individuals and corporations, who have themselves created or have obtained such records from sources other than those identified in paragraphs (a) through (e) of this section;

(h) Federal, state, and local courts where such records are being held under seal; or

(i) Foreign governments.

§ 1400.4 Types of materials included in scope of assassination record and additional records and information.

The term *record* in *assassination record* and *additional records and information* includes, for purposes of interpreting and implementing the JFK Act:

(a) papers, maps, and other documentary material;
(b) photographs;
(c) motion pictures;
(d) sound and video recordings;
(e) machine readable information in any form; and
(f) artifacts

§ 1400.5 Requirement that assassination records be released in their entirety.

An assassination record shall be released in its entirety except for portions specifically postponed pursuant to the grounds for postponement of public disclosure of records established in § 2107.6 of the JFK Act, and no portion of any assassination record shall be withheld from public disclosure solely on grounds of non-relevance unless, in the Review Board's sole discretion, release of part of a record is sufficient to comply with the intent and purposes of the JFK Act

§ 1400.6 Originals and copies.

(a) For purposes of determining whether originals or copies of assassination records will be made part of the President John F. Kennedy Assassination Records Collection (JFK Assassination Records Collection) established under the JFK Act, the following shall apply:

(1) In the case of papers, maps, and other documentary materials, the Review Board may determine that record copies of government records, either the signed original, original production or a reproduction that has been treated as the official record maintained to chronicle government functions or activities, may be placed in the JFK Assassination Records Collection;

(2) In the case of other papers, maps, and other documentary material, the Review Board may determine that a true and accurate copy of a record in lieu of the original may be placed in the JFK Assassination Records Collection;

(3) In the case of photographs, the original negative, whenever available (otherwise, the earliest generation print that is a true and accurate copy), may be placed in the JFK Assassination Records Collection;

(4) In the case of motion pictures, the camera original, whenever available (otherwise, the earliest generation print that is a true and accurate copy), may be placed in the JFK Assassination Records Collection;

(5) In the case of sound and video recordings, the original recording, whenever available (otherwise, the earliest generation copy that is a true and accurate copy), may be placed in the JFK Assassination Records Collection;

(6) In the case of machine-readable information, a true and accurate copy of the original (duplicating all information contained in the original and in a format that permits retrieval of the information), may be placed in the JFK Assassination Records Collection, and

(7) In the case of artifacts, the original objects themselves may be placed in the JFK Assassination Records Collection.

(b) To the extent records from foreign governments are included in the JFK Assassination Records Collection, copies of the original records shall be sufficient for inclusion in the collection.

(c) In cases where a copy, as defined in paragraph (a) of this section, is authorized by the Review Board to be included in the JFK Assassination Records Collection, the Review Board may require that a copy be certified if, in its discretion, it determines a certification to be necessary to ensure the integrity of the JFK Assassination Records Collection. In cases where an original, as defined in paragraph (a) of this section, is required for inclusion in the JFK Assassination Records Collection, the Review Board may, at its discretion, accept the best available copy. In such cases that records included in the JFK Assassination Records Collection, whether originals or copies, contain illegible portions, such records shall have attached thereto a certified transcription of the illegible language to the extent practicable.

(d) For purposes of implementing the JFK Act, the term *copy* means a true and accurate photocopy duplication by a means appropriate to the medium of the original record that preserves and displays the integrity of the record and the information contained in it.

(e) Nothing in this section shall be interpreted to suggest that additional copies of any assassination records contained in the JFK Assassination Records Collection are not also assassination records that, at the Review Board's discretion, may also be placed in the JFK Assassination Records Collection.

(f) Nothing in this section shall be interpreted to prevent or to preclude copies of any electronic assassination records from being reformatted electronically in order to conform to different hardward and/or software requirements of audiovisual or machine readable formats if such is the professional judgment of the National Archives and Records Administration.

§ 1400.7 Additional guidance.

(a) A government agency, office, or entity includes, for purposes of interpreting and implementing the JFK Act, all current, past, and former departments, agencies, offices, divisions, foreign offices, bureaus, and deliberative bodies of any Federal, state, or local government and includes all inter- or intra-agency working groups, committees, and meetings that possess or created records relating to the assassination of President John F. Kennedy.

(b) The inclusion of artifacts in the scope of the term assassination record is understood to apply solely to the JFK Assassination Records Collection and to implement fully the terms of the JFK Act and has no direct or indirect bearing on the interpretation or implementation of any other statute or regulation.

(c) Whenever artifacts are included in the JFK Assassination Records Collection, it shall be sufficient to comply with the JFK Act if the public is provided access to photographs, drawings, or similar materials depicting the artifacts. Additional display of or examination by the public of artifacts in the JFK Assassination Records Collection shall occur under the terms and conditions established by the National Archives and Records Administration to ensure their preservation and protection for posterity.

(d) The terms and, or, any, all, and the plural and singular forms of nouns shall be understood in their broadest and most inclusive sense and shall not be understood to be terms of limitation.

(e) Unless the Review Board in its sole discretion directs otherwise, records that are identified with respect to a particular person shall include all records relating to that person that use or reflect the true name or any other name, pseudonym, codeword, symbol number, cryptonym, or alias used to identify that person

(f) Unless the Review Board in its sole discretion directs otherwise, records that are identified by the Review Board with respect to a particular operation or program shall include all records, pertaining to that program by any other name, pseudonym, codeword, symbol, number, or cryptonym.

§ 1400.8 Implementing the JFK Act—Notice of Assassination Record Designation.

(a) A Notice of Assassination Record Designation (NARD) shall be the mechanism for the Review Board to announce publicly its determination that a record or group of records meets the definition of assassination records.

(b) Notice of all NARDs will be published in the Federal Register within 30 days of the decision to designate such records as assassination records.

(c) In determining to designate such records as assassination records, the Review Board must determine that the record or group of record will more likely than not enhance, enrich, and broaden the historical record of the assassination.

Dated: June 22, 1995.

David G. Maxwell,

Executive Director Assassination Records Review Board.

[FR Doc. 95-15819 Filed 6-27-95; 8:45 am]

BILLING CODE 6820-TD-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024-AC14

National Capital Region Parks; Special Regulations; Correction

AGENCY: National Park Service, Interior.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to the final regulations which were published Friday, April 7, 1995 (60 FR 17639). The regulations limit the sales on Federal park land to books, newspapers, leaflets, pamphlets, buttons and bumper stickers and set standards for sites, stands and structures used in such sales within National Capital Region Parks.

EFFECTIVE DATE: May 8, 1995

FOR FURTHER INFORMATION CONTACT: Sandra Alley, Associate Regional Director, Public Affairs and Tourism, National Capital Region, National Park Service, 1100 Ohio Drive SW., Washington, D.C. (202) 619-7223

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final rule contains one error which may prove to be misleading and is in need of correction.

Correction of Publication

Accordingly, the publication on Friday, April 7, 1995 (60 FR 17639) of the final regulation, FR Doc. 95-8599, for National Capital Region, is corrected as follows.

In the FR Doc. 95-8599, appearing on page 17649 in the issue of Friday, April 7, 1995, the words "the introductory text of" need to be added after the word "revising" that appears in the first column, beginning on the ninth line, which now reads "2. Section 7.96 is amended by revising paragraph (k)(2) to read as follows:" is corrected to read "2. Section 7.96 is amended by revising the introductory text of paragraph (k)(2) to read as follows:"

Dated: June 22, 1995

Rick Gale,

Acting Chief, Ranger Activities Division

[FR Doc. 95-15741 Filed 6-21-95; 8:45 am]

BILLING CODE 4310-70-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[A-1-FRL-5249-6]

Clean Air Act Promulgation of Extension of Attainment Date for Ozone Nonattainment Area; Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is extending the attainment date for the Hancock and Waldo Counties, a marginal ozone nonattainment area in Maine to November 15, 1994. This extension is based in part on monitored air quality readings for the national ambient air quality standard for ozone during 1993. This notice also updates tables in 40 CFR 52.1024 and 40 CFR 81.320 concerning attainment dates in the State of Maine.

EFFECTIVE DATE: This extension becomes effective July 28, 1995.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Phone. 617-565-3244

SUPPLEMENTARY INFORMATION: On Feb 22, 1995 (60 FR 9813), EPA published a notice of proposed rulemaking (NPR) for the State of Maine. The NPR proposed extending the attainment deadline for ozone for Hancock and Waldo Counties, and asked for public comment. No comments were received.

CAA Requirements and EPA Actions Concerning Designation and Classification

Section 107(d)(4) of the Clean Air Act as amended in 1990 (CAA) required the States and EPA to designate areas as attainment, nonattainment, or unclassifiable for ozone as well as other pollutants for which national ambient air quality standards (NAAQS) have been set. Section 181(a)(1) (table 1) required that ozone nonattainment areas be classified as marginal, moderate, serious, severe, or extreme, depending on their air quality.

In a series of Federal Register notices, EPA completed this process by designating and classifying all areas of the country for ozone. See, e.g., 56 FR 56694 (Nov. 6, 1991); 57 FR 56762 (Nov. 30, 1992); 59 FR 18967 (April 21, 1994)

Areas designated nonattainment for ozone are required to meet attainment dates specified under the Act. For areas classified marginal through extreme, the attainment dates range from November 15, 1993 through November 15, 2010. A discussion of the attainment dates is found in 57 FR 13498 (April 16, 1992) (the General Preamble).

The Hancock and Waldo Counties, Maine area was designated nonattainment and classified marginal for ozone pursuant to 56 FR 56694 (Nov. 6, 1991). By this classification, its attainment date became November 15, 1993.

CAA Requirements and EPA Actions Concerning Meeting the Attainment Date

Section 181(b)(2)(A) requires the Administrator, within six months of the attainment date, to determine whether ozone nonattainment areas attained the NAAQS. For ozone, EPA determines attainment status on the basis of the expected number of exceedances of the NAAQS over the three-year period up to, and including, the attainment date. See General Preamble, 57 FR 13506. In the case of ozone marginal nonattainment areas, the three year period is 1991-93. CAA section 181(b)(2)(A) further states that, for areas classified as marginal, moderate, or serious, if the Administrator determines that the area did not attain the standard by its attainment date, the area must be reclassified upwards.

However, CAA section 181(a)(5) provides an exemption from these bump